

A TREATISE

OF

The Antiquity, Authority, Vses
And Jurisdiction of the Ancient Courts of

LEET, or view of *Franck-Pledge*, and of Subor-
dination of Government derived from the Institution
of *Moses*, the first Legislator: And the first
imitation of him in this *ISLE AND* of Great
BRITAIN, by *KING Alfred*,
and continued ever since.

Together with
Additions and alterations of the Moderne
Lawes and *STATUTES* inquireable at those
COURTS, untill this present Yeare, 1641.

With a large Explication of the old *OATH* of
Allegiance Annexed.



L O N D O N,

Printed by *R. B.* and are to be sold by *G. Badger*
at the *Kings Head*, in *St. Pauls Church-Yard*.

1641.

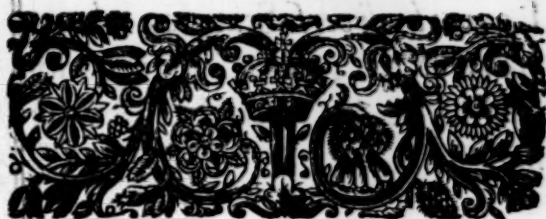
THE A. T. F.

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TO
The Right Honourable,
the *Knights, Citizens* and *Burgesses*
Assembled in the Commons House of
PARLIAMENT:

And in that Numerous Assembly to the
Worthy *SPEAKER*, His much Honoured,
JOHN SELDEN, Esquire, with the
rest of the Learned long *ROBE*.



*His Treatise of the
most Ancient Court
Leets (Right Honourable) contains in it the
severall Crimes and Offences there in-
quirable, as well by the Common*

The Epistle

Law as by diverse Statutes, whereof many of this great Congregation had a Vote and interest in the making.

*Sir Edward
Coke.*

*It hath bin the work of many inter-
cisive houres, and had a whole win-
ter-Age under the over-sight of a
ludge, famous in his time, sometimes
an Honourable member of former
Parliaments. How it was entertai-
ned by him, and with what benediction
it returned to the Author from him,
is well knowne to a Gentleman yet li-
ving, his then Amanuensis. Since it
pleased his late Majesties Attorney
generall, upon a reference to him from
his Sacred Majesty, dated Decem-
ber 1634. to recommend the exa-
mination of this worke, and the Sta-
tutes therein cited to an able Counsel-
lor,*

*Tho. Tesdall
Esquier.*

Dedictory.

lor, of Grayes-Inne, who after a deliberate perusall and consideration had of it, did at the end thereof Certifie his opinion in these words.

I have seriously perused this Tract concerning Court Leets, and finde it to bee compiled with much care and diligence; And I conceive generally well composed and usefull to bee published.

*13. July
1636.*

Not long after this the Decree of the Star-Chamber intervening for limitation of the Presse upon some strickt termes,

This little Creature had the happinesse to be reserved for these long lookt for times. The motive inducing the publishing of it is a three-fold engagement of the Author.

1. De-

The Epistle

1. *Debitum reipublicæ, a debt due from him to the Common-wealth, for expiation of the many lost and mispent houres of pretious time.*

2. *It is debitum professionis, a debt of his calling or profession, wherein every man is but a Steward, and must render an accompt; Hee must not reponere talentum in sudario, but so order and improve it, that hee may be enabled to cast, if not a Talent, yet a Mite into the Common Treasury.*

* *In Vita Aureli.*

3. * *It is debitum promissionis in prælo, a debt of Promise and that in the Presse. All legall promises, especially those which are publikely attested, are inviolably to be observed: Now the end of publishing it, is for the common good: For sithence the Lect is justly termed schola insigniendi*

Dedicatory.

niendi juvenes, It is very necessary that the sonnes and servants of Farmers, Yeomen and others versed in rurall affaires, should bee disciplined in the Lawes, under the government whereof they live and have their protection. And for their better instruction, I have in the rehearsall of the severall Statutes declared the paines and penalties, for the benefit of persons who have not Statutes at large or abridgements. Reverend Master Crompton, in the Dedication of his Iustice of Peace, affirmeth that hee thought fit to set downe the penalties and punishments due to every offence mentioned in the charge contained in that booke, in pursuance of the Order and method prosecuted by the Honourable, Sir Anthony Fitzharbert, in his treatise of that Subject, and

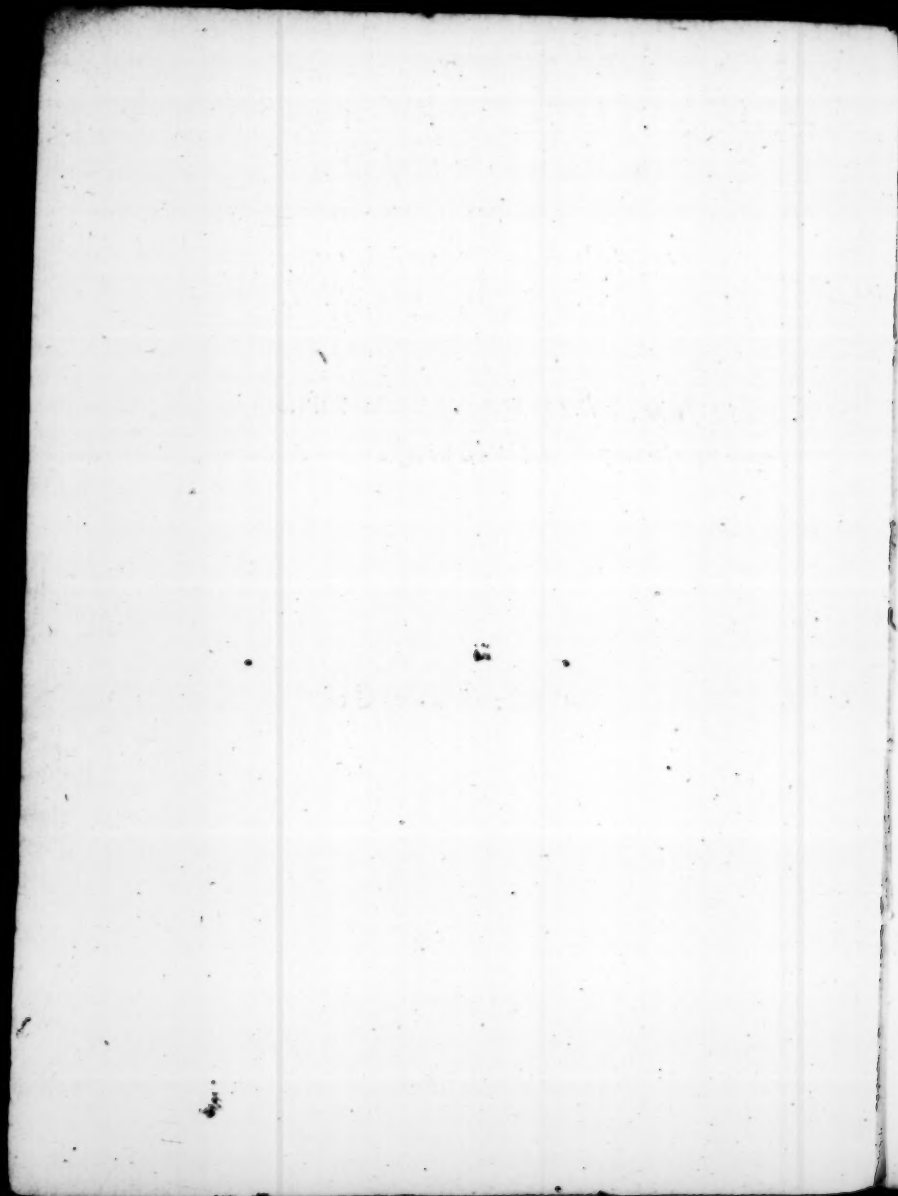
The Epistle

*in imitation of the usage and custom
of the Iustices of Assize in their
Circuits, deeming it necessary to in-
form the people as well of the punish-
ment, as of the offence. And if par-
vis fas sit componere magna, I
have presumed to take my patterne
thence, that offenders may know the
proportion of their paine as well as the
quality of their crime. And now,
right honourable, this treatise, toge-
ther with the other annexed, the Au-
thor doth most submissively present
unto this thrice Honourable Assem-
bly, humbly imploring the vouchsafe-
ment of Your Honourable Licence
and safe Conduct for those innocent
Twinnes to passe cheerefully into the
world; That they may be disposed and
employed to that end for which they
were compiled as Your Honours shall
thinke*

Dedicatory.

thinke fit. The God of all Counsell and Consolation be present and President in all your religious Counsells and Consultations, and multiply his blessings upon this whole body, as well in all your publike, as private affaires; For which the Authorm will never cease incessantly to pray.

Rob. Powell.



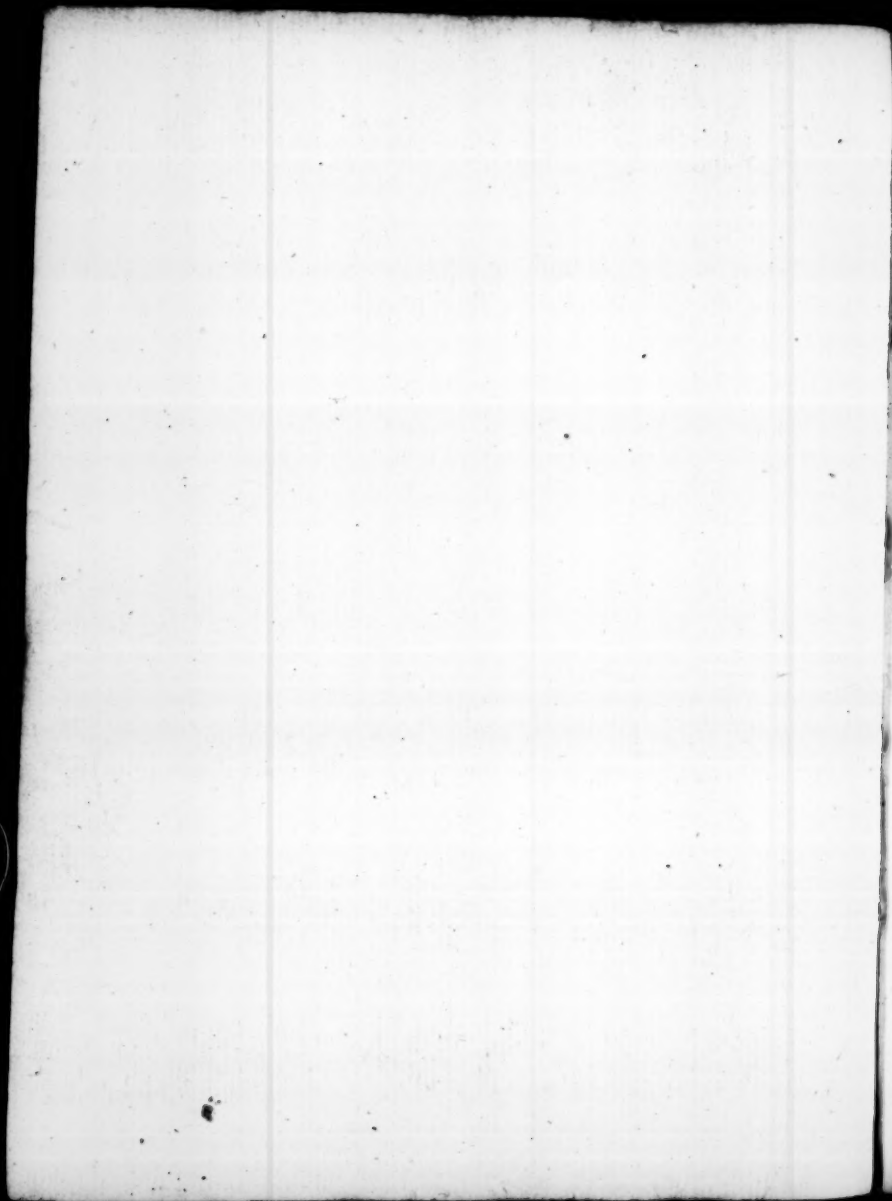


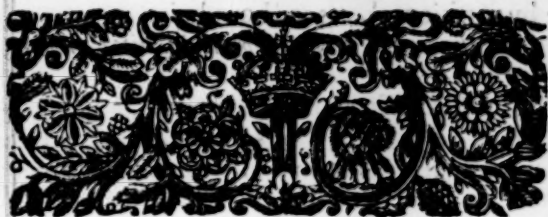
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THE
Antiquity, Authority,
Uses and Jurisdiction of Court
Leets, or view of Franckpledge,
&c.

The Preface or Introduction,
touching the occasion and originall
of Lawes.

WHilst man stood in the state of Innocency, There was no sinne, and so no need of any written or positive Law, no need of Oathes for the administration of Law; For in the first age & in a long time after the deluge, there was no oath heard of.

In the second age of the world, As there was confusion of languages; So there was of all other things; All things were in common: No distinctions of Dominions, Possessions, & Inheritances
B by

Virgil : *Geo.* 1. by partitions, Lotts and boundaries,
Nesignare quidem, aut partiri limite Campum,
Fas erat--

Hence Confusion bred Contention, and might controlled right : *Nimrod* then began to be a mighty one in the earth, Hee was a mighty hunter before the Lord, and was the first Monarch, who usurped power without lawes.

From this confused generation God calleth *Abraham* and gives him this charge, *Get thee out of thy Countrey, and from thy kindred, and from thy fathers house unto a land that I will shew thee, And I will blesse thee, and make thy name great, And thou shalt be a blessing &c.:* So *Abraham* departed, as the Lord had spoken unto him, And *Lot* went with him.

They had not long dwelt together but their substance increased and the land was not able to beare them; As riches increased so the right of property, or *meum et tuum* began to be narrowly pryed into, and hath since begotten all civill differences, and consequently all civill lawes for discussing and deciding of differences betweene man and man.

There was civill diffention betweene the sheards-men of *Abraham* and *Lot*, and certainly it was about their substance. To redresse this growing mitchife *Abraham* bethinkes himselfe of a partition. And to prevent a division of minde, descends to a division of meanes. And (though Vnkle unto, and elder than *Lot*) begins to stoope first in this wise.

Let there be no strife I pray thee betweene thee and mee, and betweene thy sheards-men and my sheards-
 B 2 *men,*

and Vses of Leets.

3

men, for we are brethryen, is not the whole land before thee? Separate thy selfe I pray thee from mee, &c.

And *Abraham* gave *Lot* the benefit of election of the land, to take either the right hand or the left hand; which was an example of division of possessions and distinguishing right of property for future ages.

As *God* had promised to *Abraham*, that *His seed should be in number as the starres of Heaven*; so did his generations increase and multiply; With multiplications of families, Sinnes and Iniquities were also in abundance multiplyed: All sorts of people both good and bad grew up together: *Force* and *Fraud* enlarged their dominions; *Esau* was a cunning hunter, a man of the field, And *Jacob* was a plaine man, dwelling in Tents. *Jacob* had *Ioseph* a good sonne, And so he had his *Simeon* & *Levi* who troubled him, *Gen. 34. instruments of cruelty in their habitations, Gen. ca. 49. Ioseph* had one *Reuben* to his brother, But all the rest envied, hated him, and conspired against him.

At length *Jacob* and *Ioseph* in fullnesse of yeares die. From the tribe of *Levi* *Moses* is raised, and preserved in an *Arke* of Bulrushes from the tyranny of *Pharaoh*, to be a Law-giver, a Prophet, and a cheife Ruler amongst the children of *Israel*, *Prudentissimus Legislator, Iustissimus Princeps, ac Propheta maximus.*

In the meane time the *Israelites* doe grievously suffer under the tiranoicall oppressions and impositions of *Pharaoh*; and *Moses* is sent with the assistance of *Aaron* to deliver them; After whose

Antiquity, Authority,

miraculous deliverance by the overthrow of *Pharaoh* and his host in the red sea, *Moses* and the *Israelites* having sung praises unto God, & erected an *Altar* in memorial of their blessed deliverance, *Moses* disposeth him selfe to a settled government of the people, *And hee sate to judge, And the people stood by Moses* from the morning to the evening.

The first Institution and Subordination by *Moses.*

IN this course of *Judicature* *Moses* was much incombred, and over-charged with variety, and multitude of causes; which *Iethro* his father in law observing, doth gently admonish him in this wise, *The thing that thou dost doe, is not good, Thou wilt surely weare away both thou, and this people that is with thee, thou art not able to performe it of thy selfe alone. And then doth Counsell him for the ease of himselfe and the people to elect subordinate officers.*

Exod. 18. 2.

Thou shalt provide out of all the people able men, Such as feare God, men of truth, having covetousnesse, And place such over them, to be rulers over thousands, of hundreds, of fifties, of tens, And let them judge the people at all seasons, &c.

In pursuit of this grave advice, *Moses* accordingly did choose able men out of all *Israel*, and made the heads over the people, rulers over thousands, rulers over hundreds; rulers over fifties, & rulers over tens, & they judged the people at all seasons; the hard causes they brought unto *Moses*; but every

ry final matter they judged themselves. Thus (*Moses* upon consultation with *God* having performed and put this holy Counsell in practice) His incomprehensible *Deity* vouchsafed the honouring of *Moses* with his own presence upon *Mount Sinai*, And therewith His immediate voice proclaimed the moral Law, Containing all the grounds of *Equity* and *Iustice*, and gave them unto him ingraven in two tables of stone.

The first promulgation of Lawes, and the beginning of Legall Oathes for administration of Iustice.

AS *Moses* received them from *God*, so in discharge of his sacred function, he faithfully enjoined them unto the people. And as falshood and fraud increased, Soe for avoiding and discovery thereof, and for true execution of Iustice, Heb. 6. 16. As also to put an end to strife and controversie, The ministration of legall Oathes began to grow in use. And not long after the receiving of the *Decalogue* by that great *Prince* and *Prophet*. It was one of his first Lawes given in charge unto the people.

If a man deliver unto his neighbour an Asse, or an Oxe, or a Sheepe, or any beast to keepe, And it die, or be hurt, or be driven away no man seeing it, Then shall an Oath of the Lord be betweene them both, that hee hath not put his hand to his neighbours goods, and the owner of it shall accept thereof, &c.

By this it is evident, that *Moses* from *Gods* mouth,

mouth, and by inspiration of his holy Spirit, was the first personall *Legislator* in the world, and the first distributor of Iustice by subordination of Rulers and Magistrates, and the onely *patterne* for all succeeding *Princes*; which moved *Eusebius* to say *A Deo igitur Lex originem habet, Et eam mortalium omnium primus Moses Hebraeis constituit, Quae cateris deinceps hominibus condendarum Legum haud dubio exemplar fuit.*

The first imitation of *Moses* in this Kingdome by *King Alfred*.

THIS *Moses* was a *Patterne* and *Exemplar* of making lawes and managing of them by inferior Ministers, in this our ancient and famous *Island of Great Britaine*, renowned in the constant succession and preservation of her lawes, notwithstanding the permutation and change of government by the Conquest, and rule of severall nations, may manifestly appeare by that which followes.

King Alfred who began to raigne in this *Island*, *Anno Christi* . 872 . the best lettered *Prince* that was in those times, began his lawes with *Loquutus est Dominus ad Mosem hos sermones, dicens, Ego sum Dominus Deus tuus, &c.* And so recites the 10. Commandements given by Almighty God upon Mount *Sinai*. And then proceeds with the most materiall lawes mentioned in the 21. 22, and 23, *Chap. of Exodus*. which hee thought to be most apt and competible for the government

government of his kingdome, closing it up with:

*Hac ea sunt jura, quæ rerum omnium præpotens
Deus ipse Moysi custodienda proposuit, &c.*

And then concludes with, *Has ego Aluredus
Rex Sancti ones in unum collegi, atq; easdem literis
mandavi, Quarum bonam certe partem Majores
nostri religiosè coluerunt; Multa etiam mihi digna
videntur, quæ a nobis hac etiam atate pari religione
observentur, Nonnulla tamen eorum ex consilio Pa-
trum, partim antiquanda, partim renovanda curavi-
mus, &c.*

I King *Alfred* have collected the se lawes into one body and have caused them to be written, whereof truly a good part, our Ancestors did religiously regard or obey: And many of them doe seeme worthy unto mee, That they should be with the like religion in this age or time observed, yet some of them by the advice of our grave men (our Fathers) wee have taken care partly to antiquate, and partly to revive or renew. Which in the language of succeeding times, was as much, as if he had said, Some of them by the advice of our Parliament wee have thought good partly to repeale, and partly to continue.

After this, the good young King (doubtlesse *Non sine consilio Patrum*) doth proceed, and culles out and confirms certaine lawes and sanctions of King *Inas*, *Offa* the King of the *Mercians*, and *Ethelbert* the first King that ever received Baptisme here in England.

The

Antiquity, Authority,

The first division of this kingdome by
Alfred into Counties, Hundreds
and Tythings.

THis blessed *Prince* (the division of his kingdome being confounded by meanes of the then late distracted *Heptarchy*) having made league with *Guthrunus* the *Dane*, and thereby possessed himselfe of the entieriety of the *Realme*, and being sole *Monarch* thereof, did (in imitation of *Iethro* his Counsell to *Moses*) subdivide and distribute the government of the land into severall partes; And did first reduce it into *Satrapias* wth we now call shires or Counties, *Centurias* now called hundreds, *Decurias* now lalled tythings, which at that time, in the infancy of of this subordination, consisted only of ten men. But in succeeding ages grew more populous, and are not confined in number of persons, though it still retaineth the same appellation: Of those ten persons, proscribed to their decurie, or tythings, Every one was to be a *fidejussor* or pledge, one for another; And if any one received losse, the rest were to make recompence for it.

Hence it was that nine of them were called *ingenui fidejussores*, which we in the title of our *Leets* call *Franciplegii*: And the Tenth was called *Decurio*, which continues in the westerne parts by the name of tethingman, in other places called *vadem primarium et praprium*, in *Kent* called *Borsholder* (that is to say) a cheife pledge, in *Yorkshire* called *Tententale*.

The

The appointment of Officers and making Lawes for the better ordering of the Kingdome.

THIS mirrour of Princes having thus ordered his Kingdome, did set over every Shire a *Senator* and a *Greve*, which the *Normans* afterwards called *Comes*, and *Mucecomes*, and our later ages, an Earle, and Sheriffe; Over every Century, an officer called a Constable, and every Decury, a chiefe pledge, or tethingman. And did decree, that every man of free condition (*liber homo*.) should bee of a certaine Hundred or Tything, out of which hee was not to remove without securitie.

After hee had thus ordained a law for the locall setting of his Subjects, that they might bee knowne, and called to account by the certaintie of their abode upon all occasions of suspicion, or accusation for any crime or misdemeanour. Then he provided good and wholesome lawes, for the better avoiding of rapines, thefts, murders, or any crimes whatsoever, as also for the securing of the persons and estates of his Subjects; and for the better rule and government of them in the place of their residence: amongst which I finde one Law cited by that noble and ever memorable Antiquarie, *Quod si quis delicti aliquis insimularetur, statim ex centuria ex decima exhiberet, qui eum vadarentur. Sin istiusmodi*

*Cambd. Brit.
fo. 57.*

Antiquity, Authority,

vadem non reperiret, legum severitatem horreret; Si quis verò reus, ante vadat, onem, vel post transfugeret; Omnes ex Centuria, & decima, Regis mulctam incurrerent, If a man were accused of any offence, hee should presently out of the Hundred and tything tender such as should be pledges or baile for him, but if hee could not finde such baile, hee should then dread the severity of the Law (which I conceive to be according to the moderne law; Imprisonment) But if any person accused, either before pledges, or after should flye away, all the men and inhabitants of the tything and hundred should incur the Kings mulct, that is, be amerced, to be *in misericordiam Regis* at the Kings mercy.

The fruit and effect of this law is worth observation, what good redounded to the Common weale in those times, For saith the Author, *Hoc commento pacem infudit provincia, ut per publicos aggeres, ubi semita per quadrivium finduntur, armillas aureas juberet suspendi, Quae viantium auiditatem rideret, dum non esset, qui eas abriperet,* By this devise he made such peace in the whole Country, that he caused certaine golden bracelets to be hanged upon publike batches or hillocks at every crosse way, which might, as it were, deride the auiditie of passengers, sithence there were none that durst take them away.

It is no doubt, but this Law or Ordinance doth not only in part retain a vigor and being at the common Law, but hath given light to many statutes to own force of great consequence.

As

As, to that, of the Statute of *Winton*, inquireable at Leets, by which it was enacted, That cries should be solemnly made in all Counties, Hundreds, Markets, Faires, and all other places where great resort of people is, so that none should excuse himselfe of ignorance, that from thence forth every country be so well kept, that immediately upon such robberies, and felonies committed, fresh suite be made from towne to towne, and from countrey to countrey, &c. And after that the felony or robberie be done, the countrey shall have no longer space than fortie dayes, within which it shall behoove them to agree for the robberie or offence, or else that they will answer for the bodies of the offenders.

But albeit the Statute be generall and no mention made whether the robberie bee committed in the day time or in the night, the Hundred shall not be liable, but where the robberie or felonie is committed in the day time, yet if diverse doe commit a robberie, those of the Hundred ought to apprehend all the felons, for though they apprehend some of them, yet that will not suffice to excuse them, unless they apprehend all of them by that Statute of 13. *Edw. 1.*

*co. lib. 7 fo. 6.
Ashpoles Case.*

But now it is qualified in that point, by the Statute of 27. *Eliz. cap. 13.* By which if any of the Inhabitants of any towne, village, or hamlet next to the place where the robberie was done, do in their pursuite apprehend any of the offenders, that shall excuse them, though all bee not taken.

Antiquity, Authority,

The Statutes concerning the approve-
ment of wastes, woods, &c. and other
Lawes derived from the Law of
Alfred, cited by *M. Cambden*.

From that Law of King *Alfred*, the Statute of
13. *Edw. 1. cap. 46.* concerning approve-
ments of Wastes, Woods, and Pastures, may
seeme to borrow its light, whereby it is provi-
ded, that if any having right to approve, do le-
vie a Dike or an Hedge, and some by night, or
at any other season, when they suppose not to be
espied, doe overthrow the Hedge or Dike, and
men of the townes neere, will not indict such as
be guiltie of the fact, The townes neere adjoyn-
ing shall bee distrained to levie the Dike or
Hedge at their owne costs, and to yeeld dam-
ages.

At the Common Law, if one be slaine in any
towne in the day time, so long as it is plaine day
light, and the man-killer doth escape, the town
where the Felonie was committed, shall bee a-
merced for it, *Dum quis felonice occisus fuit per
diem, nisi felo captus fuit, tota villata illa oneretur.*

This I thought pertinent to my present dis-
courese, to parallell that ancient Law of *Omnes ex
centuria & decima Regis multam incurrerent*,
with our latter Lawes, whereby towneships are
onerable upon the escape, or not apprehending
of offenders in certaine cases.

Besides that good and profitable Law, amongst many others, that gracious Prince did further decree, that the *Decurio* or Tythingman might judge of small matters, and the *Centurio* or Constable of greater matters, and at the frequent meetings in every *Satrapie*, or Shire (now called Countie Courts) the Senator or Greve was to heare and determine matters, of greatest difficultie and moment.

King *Edward sen.* succeeded who made a law *De diebus cogendi populi*, that every Greve & *Præpositus quisque*, should every moneth call the people together, doe every man right, and decide all controversies, which confirmed the use of the Countie Court.

Edw. sen. An. 900
Lamb. fo. 51.

King *Edgar* made a law *De Comitibus, Centur. a Comitibus quilibet interesse*, That is to say, let every man be present at the Leets or meetings of Hundreds, but out of every shire, let there be a more famous meeting twice a yeare, *Celeberrimus autem his quot annis Conventus agitur*, and this is now the Sherifffesturne.

Edgar. Anno 997.

This King did farther decree, that each person should finde pledges who might bring him forth to render every man his owne. *Quisque fideiutores, qui eum jus suum cuique tribuere, quam paratissimum præstent adhibeto.*

Lamb. fo. 80.

The

The manner of proceeding by Juries in
those subordinate Courts of Counties,
Hundreds, &c.

NOW the manner of proceeding at that time
in those meetings, called *Centuria Comitiiis*,
& *Satrapia Comitiiis*, (now called Court Leets
and Sheriffes turnes) doth appeare by a
Law practised in those dayes, and after re-
vived by King *Etheldred*, who lived *Anno 979*.
which thus useth,

Lamb. Explic.
verbo.

*In singulis Centuriis Comititia Sunto, atque libera
conditionis viri duode ni etate superiores, unâ
cum Proposito sacra tenentes, jurant se non in-
nocentem damnaturos, fontemve absoluturos.*

Let there be meetings in every Hundred, and let
twelve freemen of the better sort, together with
the chiefe pledge, sweare upon the holy Evan-
gelist, not to condemn the innocent, nor to ac-
quit the nocent, that is, to doe every man right.

I will passe over many good lawes before the
Conquest, let us cast our eyes a little neerer, and
see how the Counsell of *Iethro* to *Moses* hath
beene since pursued.

Bracton a learned and famous Common Law-
yer, who wrote in the time of *Hen. 3.* from the
Conquest, writes of the practice and duties of
Kings,

Bract. l. 2. cap. 2.

Rex & non alius debet judicare, &c. The King
and none else ought to judge, if he alone be able
to

to doe it, sithence he is bound thereto by vertue of his oath, and therefore the King ought to exercise the power of law as Gods Vicegerent, and minister on earth,

Sin autem Dominus Rex ad singulas causas determinandas non sufficiat, &c.

But if the King be not able to determine all causes, that his labour may be the easier, *in plures personas partito onere, eligere debet de regno suo viros sapientes, & timentes Deum, in quibus sit veritas eloquiorum & qui oderunt avaritiam, qua inducit cupiditatem: Et ex illis constituere iusticiarios, vicecomites & alios ministros & ballivos suos, ad quas referantur tam questiones super dubiis, quam querimoniae super injuriis, &c.*

He ought to choose out of his Kingdome wise men fearing God and hating coverousnesse, and out of them to appoint Justices, Sheriffs and other Ministers to decide questions of doubt, and to redresse injuries, &c.

All subordinate Justice derived from the King and Crowne.

IN a cause of Replevin upon a distresse for an Amerciament in a Leet, *Fineux* then chiefe Justice in his grave and learned argument affirms, That at the first, the administration of justice was in one hand, and in the Crowne, and then afterwards by reason of the multitude of people, the administration of justice was divided into Counties, and the power was committed

ted to a deputie in every Countie, that is to say a Sheriffe, who was Bayliffe and Deputie to the King, and was assigned for conservation of the peace, and to punish offenders, and to defend the Realme upon invasion of enemies, to bee attendant upon the King in times of warre, and to cause all his people within his Countie to goe with him for defence of h's land, and for the better government of the Countie, and correction of offenders. There were two Courts assigned to him (*viz.*) the Countie Court (held every moneth) and the Sheriffes turne, held twice every yeare, by which two Courts, the whole Countie was governed: the Countie Court was for one man to have remedie against another, for any thing betweene them under 40. shillings, And the Sheriffes turne; unto which every man within the Countie of a certain age, should come, and were compelled to come, that they might not be ignorant of the things there published (or given in charge) whereby they were to be governed; and this was called Suite Reall, by reason of their allegiance; unto which they were sworn to be true and faithfull to the King, &c. Afterwards it seemed to be too great a thing for the Sheriffe to performe all in his owne person, whereupon Hundreds were ordained, and divided out of the Counties, and in every Hundred was appointed a Conservator of the peace, called a Constable; and after, Boroughs were made and ordained, and within every of them a pettie Constable, and in some places a Bo-

Boroughhead according to the diversitie of the language, for that this land had been inhabited by persons of divers Nations, as *Britanes*, *Saxons*, *Danes*, and *Normans*, So that, the diversitie of termes and appellations came by the diversitie of Languages, That the Hundreds and Boroughs did resort unto the Tournes, by reason of their allegiance, And the Constables, and petty Constables, did there present the defaults of offenders, but afterwards upon consideration had of the great trouble, which the people sustained in travelling to the Sheriffs Tourn, *Leets* or *View of Franckpledge* were granted unto Lords of Manours, within certaine precincts, to reforme all manner of defaults there.

By all which it is plaine, that *Leets* had their derivation both in nature and power out of the Sheriffes Tourne, and were purchased for the ease of the people by divers Lords; And in diverse places, there is a dutie or summe of money payable to the Lord of the *Leet*, by custome, in regard he purchased the same, for the ease of the residents and inhabitants, to free them from their attendance at the Sheriffes Tourne, and also in regard the Lord of the *Leet* was at every coming of the Iustices in *Eyre* at his own costs to claime his libertie, which dutie is sometimes called *Capitagium*, sometimes *Certum Lete*, and so by other names according to the Custome of severall places: So that now by the example of *Moses* the patterne and president of all Princes and Iudges, the particular imitation of

Bullens Case,
Co. li. 7. fo. 78.

Antiquity, Authority,

K. Alfred, and by the practice of times, ever since, it is most evident that the *Iustice* of a kingdom cannot be circumscribed within the compass of a Crown, but must receive execution by subordinate officers & ministers, & consequently ther have been and must be subordinate courts of *Indicature*, and *Iustice*, for the ease both of Sovereign & subject, amongst w^{ch}, the *leet* or *view* of *Franckpledge* hath been and is of most special use.

The most principall uses of this Court, doe stand upon these three points.

1. To take view of all *Franckpledges* or Freemen, and by inquisition or examination to discover, whether every person of the age of 12. years and upwards have a free pledg, or *fidejussor*, that they shall keep the Kings peace, which, with our Ancestors was in great use and esteem, but now by desuetude of time is utterly antiquated, and only care taken by presentments of Jurors and Officers upon their oathes, to find out and punish severall delicts and offences perpetrated within the view and precincts of the *Leet*, proper for the jurisdiction of that Court.

2 To elect and swear all officers and ministers of Iustice, who are to attend the service of that meeting, as *Constables Tethingmen*, and such others, wherein the Steward must be very circumspect and careful of the *idoniety* of them, that they be persons of *honesty* to execute their office truly without malice, affection, or partiality. 2. *Science*, to know what belongs to their place, and what they ought only to do. 3. *Ability*, as wel in estate of
body

body that they may diligently attend & execute their office upon any occasion, and not be negligent or remisse, either for impotency of body, or indigence in estate.

3. The third and principal use, which is indeed now most in use, is to take all *Suit royall*, that is, every person born within the kings dominions, is a *leige subject*, and oweth naturall *legiance*, and all male persons of 12 years old, ought to take an oath for the demonstration of their naturall *legiance*, which is called *legall*, because the municipal laws have prescribed the order and form of it to be done at the *leets* and *tourns*, and this natural *legiance* is absolute, pure & indefinite, & is originally due by nature & birthright, & is cal'd *alta ligentia*, & he that oweth this is cal'd *subditus natus*.

The oath is described by *Britton c. 29. titulo*, who wrote in the first yeare of *Edw. 1.* the effect whereof is,

You shall swear, that from this day forward you shall be true and faithfull to our Sovereign Lord the King and his heires, and truth and faith shall bear of life, and member, and terrene honour, And you shall neither know, nor heare of any ill or dammage intended unto him, that you shall not defend; So help you God.

If antiquitie do make things more venerable, as most commonly it doth, this oath of natural *legiance* at the *tourn* and *leet* can plead as large prescription of its ancient and constant usage as any one thing in this nation, for it was first instituted by *K. Arthur*, at which time the *Leet* was called *Folk mote*, viz. a meeting of the people, and this appellation is retained in *London* to this day.

Antiquity, Authority,

Amongst the Lawes of King *Edward* the second before the Conquest, it is thus exprest. *Omnēs Principes & Comites. procures, milites & lib. homines debent jurare, &c. in Folkmote, & similiter omnes procures regni, milites & lib. homines universi totius regni Britannia facere debent in pleno Folkmote fidelitatem Domino Regi. &c. Hanc Legem invenit Arthurus, qui quondam fuit inclutissimus Rex Britorum, &c. Hujus legis auctoritate expulit Arthurus Rex Saracenos & inimicos a regno, &c.*

Three things considerable in the keeping of
Tournes and Leetes, 1. Time, 2. Place,
3. Persons.

THUS farre you see the Antiquitie of this Court, and the ancient and naturall privileges incident unto that. There be three things or circumstances, considerable in the keeping of it, 1. Time, 2. Place, 3. Persons. In ancient time the keeping of it was arbitrary, at the pleasure of the Lord, untill by the great Charter it was restrained to be kept twice a yeare.

Non aliquis Vicecomes vel ballivus suus faciat turnum suum per hundredum, nisi bis in anno: Et non nisi in loco debito et consueto, viz. semel post pascha et iterum post festum sancti Michaelis, et visus de franci plegio tunc fiat ad illum terminum Sancti Michaelis sine occasione. Fiat autem visus de

de franciplegio sic, v. z. quod pax nostra teneatur, et quod tithringa teneatur integra sicut esse consuevit, &c.

Notwithstanding which restraint, divers Sheriffs did afterwards make their Tournes oftentimes in Lent, when men ought to intend devotion and other workes of charitie for remedie of their soules, and sometimes after the gule of Harvett, when every man almost was busied about the cutting and carrying of his Corre, whereby the people were much grieved and disquieted. King *Edward* the third, upon the grievous complaint of his Commons, desiring the quietnesse of his people, did ordain and stablish, that every Sheriffe from thenceforth should make his Tourne yearly, one time within the moneth after *Easter*, and another time within the moneth after Saint *Michael*, and if they held them in other manner, that then they should lose their Tourne for the time.

*Plowd. fo. 316.
b. The Calends
of Aug. or the
feast of S. Pe-
ter ad vincula.
31 Edward 3.
ca. 15.*

As it was restrained in time, So it was to place and persons, it must bee kept within the precinct and libertie *in loco debito et consueto*, If it be holden otherwise, it is *coram non iudice*; And the matter of cognizance must bee within the view. For 41. *Edward 3. fo. 31.* *Kyrton* cites a Case, wherein the Lord avowed the taking of an amerciament for the stopping of an Highway, which *in rei veritate* was out of the Jurisdiction of the view, and therefore the Plaintiffe recovered dammagcs.

2 Place.

Antiquity, Authority,

3 Persons.

Marl. ca. 11.

If the Sheriffe shall keepe his Tourne, *in loco in consuetudo*, he may be indicted and punished for it. Dyer 151. As for the persons. Although in the time of King Arthur, *Omnes Proceres, Comites, Barones, &c.* were to sweare and doe their suit reall, *in pleno Folkmote*, yet by the Statute of Marlebridge, it is thus provided by way of restraint, *De turnie vice: provisum est, quod necesse non habeant ibi venire Archiep scopi, Episcopi, Abbates, Priores, Comites, Barones, nec aliqui viri religiosi, seu mulieres, nisi eorum presentia ob aliam causam specialiter exigatur, &c.* So by this Statute, All clergie and religious men, All Earles, Barons and all women are excepted and exempted, and by the law al other people under the age of 12. years, their presence being not necessary there, in regard they are never sworne upon any inquests; But all freeholders, terrtenants and other persons inhabiting within the precincts of the *Leet*, ought to appeare and do their suit, and tenants in ancient demesne, are not bound to come to the Sheriffs *Tourne*, and consequently not to any *Leet*.

Fitzh. na. Bre.
f. 158. 161.

If any of the said persons mentioned to be exempted, or if any in wardship to the King should be distreyned to do their suite, the law hath provided severall forms of writs, *De exoneracione secta*, for discharge of every of them.

Broo. Leet, 16
22 Edw. 4 22

Whatsoever the law prescribes or restraines in the Sheriffs *Tourne*, the same is binding in a *Court Leet*, and it was agreed for law that the power of a Sheriffe in the Towne, and a Steward in the

the *Leet* were all one: onely the *Leet* have power to enquire and take presentments of nufances and offences aswell in the Courts after the feast of *Easter*, as after the feast of *S. Michael*, whereas the Sheriffe in his Tourne after *Easter* ought not to enquire of any action popular, &c. but only to take suite of the resiants and other suitors, and to take the view, *quod trithinga teneantur, scilicet.*

Fitzh. Leet 11

That all above the age of 12 years come, and appeare there to doe their suite, and to take the oath of *Legiance*, if they were not sworn before. For after a person is once *juratus in decennaria* or *ad fidem & legeanciam Domini Regis*, hee is not compellable to be sworne againe.

As a *Leet* is derived by grant from the crown, so, by divers causes that may be seized into the Kings hands, and returne to the Crowne againe, and if for any just cause it bee forfeited and seised, then must the resiants and suitors againe attend and doe their suite at the Sheriffes Tourne, and what is omitted in the Tourne might be presented in the Kings bench, for in the case of *John Charneles*, *Edward* the third, *Belknappe* sets forth the law to be, that if a thing were not presented within the Lords view, then it should bee presented in the Sheriffes Tourne, and for default there, it should bee presented in the Kings Bench when the King came into the countrie, by which it plainly appeares as before is expressed, that the Iustice of the Kingdome was at first wholly

Forfeiture of
a Leet.

Antiquity, Authority,

wholly in the hands of the King and immediately derived from his person to Subalterne Officers.

*To answer one Objection for the time, that
all Leets are not kept strictly infra
menssem after Easter and
Michaelmas.*

VVHere there are ancient Customary Courts of Tenants in ancient *demesne*, or such like, that were ever exempted from the Sheriffes Tourne, and the Lords of such lands had their owne Tournes, that of *Easter* being called *Turnus de Hockday*, and that of *Michaelmas*, *Turnus Sancti Martini*, as in the Bishoprick of *Winton* and other places, those Courts are left to their Arbitrary keeping, either before or after the moneth, or at other set times, according to their ancient respective Customes, and not restrained by any Statute.

Britton the tenour of whose learned worke runneth in the Kings name, *Edward I.* as if it had beene penned by himselfe, answerable to *Iustinians Institutes*, doth therein the first salutation of the Kings subjects, with *Edwardus Dei gratia*, &c. set forth, That because his peace could not well have its being without Law, he caused the Lawes then used in this Realme to be put in writing, and did thereby command a strict observation thereof in all things, Saving a pow-

er to repeale, alter, and amend, all such things as should seeme meet unto him, with the advice of his Earls, Barons, and others of his Councel, and saving all customes unto those, as by prescription; used the same time out of minde, so as those usages were not discordant unto right.

At that time being 5. *Edward 1.* those ancient customarie Tournes, within many particular Lordships were in use, not subject to the Sheriffes Tournes; and so not within the meaning of the Statute of 31. *Edward 3. cap. 15.* which being made long after, extendeth not to any Leets, but such as were and are derived out of the Sheriffes Tourne, and so it was admitted by the Iudges, that the Leet of another Lord was not within the Statute, but the Leet of the Tourne. *Brooke Leet 21. 6 Hen. 7. 2.* And so by necessarie consequence, All Leetes derived out of the Sheriffes Tourne, and no other.

*In what Cases, and by what meanes a Leete
or Franchise may be seised or for-
feited, or the Lord
damnified.*

IN all grants of any Liberties, or Franchises there are commonly two conditions, one in *facto*, which is alwaies *explicite*, as to pay mony, or to do, or not to do any other act, &c. 2. Condition *in lege*, which is *tacite*, and *implicite* created by law.

E

There

Antiquity, Authority,

There are two sorts of conditions in Law, by the rule of the common Law, 1. The one which is founded upon a *Confidence* and *skill*, 2. The other without either of these.

There be 3. causes arising from the violation of *trust* or confidence, and want or *privation* of *skill*, which induce a *forfeiture* as well of offices, as of *franchises* (that is to say) 1. *Abuser*, 2. *Non user*, 3. *Refuser*, All which I will but summarily touch, and they may all three proceed, 1. Either from *ignorance*, 2. Or from *wilfulness*.

Abuser.

It is said by M. *Kitchin*, that Court Leets are to be forfeited *in quo warranto*, which are kept by ignorant Stewards. Some make a doubt of it. In Offices which concerne the meere and only private profit of the Lord without damage to the weale publike, the ignorance of a Steward can be no cause of schisme, but in Offices concerning administration of justice, *pro bono publico*, as a Leet, there is no doubt, but the *Franchise* may be forfeited.

Crompt. lib. fo.
145.

The Steward of the libertie of the *Abbot* of *Crowland*, by colour of his libertie of *Infangtheefe* adjudged a man to death, and for this the liberty was seized in the Kings hands, *Et nulla pœna Senescallo*, For *Quicquid iusticia fecerit de Recordo ignoranter & pro defect. scientia, non erit pro eo punitus.* 2 Ric. 3. fo. 10.

A Lord of a Leet was fined forty shillings,
for

for that his Steward took an indictment *de morte de home*, in his Leet, which did not belong unto it, and so incroached upon the King. And also took an indictment of a robbery done out of his franchise in another Countie. *Brook in finibus per contempt.* 49: cites 41. ass. p. 30.

If the Lord do hold his Leet at any time after the moneth from *Easter* and *Michaelmas*, it is void by the Statute of 31. E. 3. 15. and all presentments void, and the Lord shall lose his profits. *Brook*, Leet 17. and 21.

Non user.

Affise of Bread and Beere, and pillorie, and tumbrell are appendant to the view of *Franckpledge*, where a man hath them by a grant from the King, if he doth not keepe pillory and tumbrell hee loseth his office, *Brooke*, *Quowar*. 8.

Refuser.

The Abbot of S. *Alban* having the grant of a Gaol, deteyned the prisoners, for that he would not bee at the charge to sue out a Commission for their deliverie, the King seised the Franchise into his hands, 8. Hen. 4. 18.

*A direction for Lords in choosing of their
Stewards.*

Sihence the jurisdiction of this ancient Court is lyable upon just cause of forfeiture, and seizure into the Kings hands, it is necessarie that Lords of liberties, as well for prevention of their owne inconvenience, as for the better government of the Countrey by due execution of the Law, should select, choose and appoint out of men treyned up in the studies of the provincially Lawes of this kingdome, such, as must have the foure properties of *Iethro* his counsell, Able men, such as must bee *viripotentes*, not in strength of body, but in courage of minde. 2. They must be *viritimentes Deum*, that feare God and not the faces of men; he that hath this vertue wants none, and he that wants this is open to injustice, oppression, malice, and all other enormous impieties. 3. They must be *Aman-tes veritatem*, it is *S. Pauls* counsell, *Ephes. 6. 14.* Stand therefore, and your loines gird about with veritie, and having on the brestplate of righteousness, &c.

4. They must be *abhorrentes avaritiam*, the roote from whence all evils grow, *1 Tim. 6. 10* That which (as *Bracton* saith) doth inducere cupiditatem, when *Samuel* his sonnes were *Judges* over *Israel*, it was a brand upon them, They walked not in his waies, but turned aside after lucre, and tooke rewards, and perverted judgement, *1 Sam. 8. 3.*
The

The properties and qualities which a Steward ought to have.

Fleta describes the office of a Steward, and giveth counsell unto Lords of Manours, and liberties, to provide (or elect) their Stewards in these words, *Provideat sibi Dominus de senescallo circumspecto, & fideli, viro provido, & discreto & gratiofo, humili, pudico, pacifico & modesto, qui in legibus consuetudinibusque provincia & officio senescalie se cognoscat, & jura Domini sui in omnibus teneri affectet, & qui subballivos Domini in suis erroribus & ambiguis sciat instruere & docere, quique egenis parcere, & qui nec prece vel prelio velit a justitia tramite deviare & perverse judicare. Cujus Officium est Curias tenere Maneriarum & de subtractionibus consuetudinum, servitorum, reddituum, Sectarum ad curiam, mercata, molendina Domini, & adversus franciplegiorum aliarumque libertatum Domino pertinentium inquirat, &c.*

By which Description it is to bee observed, that a Steward ought to have a double qualification, 1 *In Moralibus.* 2 *In judicialibus,* whereby he must be guided as well in the keeping of Court Barons for the profit of his Lord, as for the honour of him, in the government of Leets for the good of the Common weale.

1 *In Moralibus,* A Steward must bee qualified with these properties before mentioned, *circumspection, fidelitie, providence, discretion, humilitie, peace,*

Antiquity, Authority,

peace, and modestie, which may be reduced into these two generalls, *S. veritie*, and *Industry*, the one proceeding from the heart, the other from the hand; his diligence or industry must be tempered, with 1 Circumspection, 2 Providence, 3 Discretion, otherwise it may incur the perill of *temeritie* and precipitance, which commonly prove fatall in all actions.

Col. 5. Epist.

Canis festinans cacos parit catulos.

His *veritie* must be attended with *fidelitie*, *humilitie*, peace, and modestie, *Veritas secum ducit Comites simplicitatem, unitatem, & pacem tandem.*

2. *Indictalibus*; and therein he must be attended with foure properties: 1 *Scientia*, hee must know himself (or be expert) in the Lawes and customes of his Countrey, and have ability to instruct or direct the Bailiffes and other ministers in dubious things, wherein they may erre.

2. *Misericordia*, he must spare the poore, not rack poore tennants, nor grinde their faces, hee must not bee outrageous in imposing excessive fines in the Leets, but (as Iudges in other Courts are, or ought to be) moderate and discreet, *secundum quantitatem delicti*, not beyond the demension of the offence, for excessive amercia-ments are against the law, *Excessus in re qualibet jure communi reprobatur*, *Co. li. 11. fo. 42.*

Mercy and truth must meet together, righteousness and peace must kisse each other, Psal. 85. 10.

3 *Iustitia*: the Prince of vertues, the faithfull Companion of this life, without which no humane societie can subsist, *Iustice* knowes no father,

ther, mother, nor brother; *Persona non accipit sed Deum imitatur*, A Steward must put on this Armour. And must neither be drawne by price nor prayer, neither by lucratorie corruption, nor any sinister affection, to deviate and wander out of the high way of Justice, and Iudge perversly.

Qui nec (as Bracton advise h) ad dextram nec ad sinistram, vel propter prosperitatem terrenam, vel adversitatis metum a tramite iustitie declinent.

4 *Fortitudine animi*. He must not be daunted neither by threats nor feare, nor overswayed by the Landlord himselfe, either in the electing of officers (a thing too frequent) or in any other thing that may concerne the due administration of his office.

A Steward being thus indowed, adorned, and qualified with those morall and judicall virtues, and properties is the fitter to undergoe the burden of that authoritie, wherewith hee is intrusted by the Lawes of the Realme. From his qualities I will passe unto his authoritie.

The Authority of a Steward in Leets.

A Leet is a Court of Record, The Steward is Iudge, and hath a double power, 1. of election of officers, 2. of Coertion or punishment of offenders; In the latter, *viz.* punishment, there is a double act to be respected, 1. *Actus Curie*, 2. *Actus Patrie*, the act of the Court, and the Act of the Iury or Countrey.

These

Antiquity, Authority,

These two doe meeete with two sorts of offences or misdemeanors by two sorts of remedies, 1 Fyne, 2 Amerciament, the one sort of offences are *Extra Curiam*, the other in *Curia*.

coll. 8 fo. 38.
Crisleys Case.

1 *Extra Curiam*, of those which are extrinsecall offences, The Jurors and officers sworne to present (who ought also to have the foure properties of *Iethros* counsell) have peculiar cognizance, and therefore power to present them, and to asseesse amerciaments for them.

2 *In Curia*, being the second sort, which are offences, either in omitting or neglecting a dutie enjoined, and to be performed by Constables, Bayliffes, Jurors, or ministers of Iustice, or in committing some contempt and disorder in the face of the Court by any officer or suitor; The Steward hath cognizance, and may punish it by fine, without inquirie by the Countrie.

1 As if a Bayliffe refuse in Court to execute his office, 7 H. 6. 12 b.

2 Or if a Tethingman refuse to make a presentment in the Leete, 10. H. 6. 7.

3 Or if any of the Iury in a Leet depart without giving his verdict.

4 Or if any suitor or other person doth misdemean himselfe either in word or deed.

5 Or if any inquest refuse to present in a Leet such defaults as they have information of, 10 Ed. 3. fo. 4.

The

The Steward hath power in t hese and the like Cases, to impose a reasonable Fyne, and such fyne is not affereable nor iraversable, 10. H. 6. fo. 8.

6 He hath power by severall Statutes in severall cases, to impannell a second Jury, to inquire of the defaults and concealements of the first jurie, and to fine them for their offence.

7 A Steward may by paroll command a Bailiffe to make distresse. 16 H. 7 fo. 14.

8 In every Leete, the Lord of the libertie hath but the amerciaments, the Court is the Kings, and therefore the Steward doth represent the person of the King, 41 Edward 3 fo. 31.

9 A Steward for default of resiants may compell a Stranger comming within the view to be of the inquest.

The remedies for recoverie of Fynes and Amerciaments in a Leete.

AS in a Leete there is a twofold remedie according to the nature and qualitie of the offences, viz. 1 Fine, 2 Amerciament: So there is in the Law, a twofold way or meane respectively to recover and obtaine that remedie for the benefit of the Lord of the libertie.

1 Either by action of debt against the offenders fined by the Steward, or pained and amerced by the Jurie.

Antiquity, Authority,

2. Or by distresse of his or their goods or cattell in some cases upon their land, though the goods of another man, in other cases by distressing the offenders proper goods in any place within the precincts of the Leete.

If a paine be imposed in a Leet upon any person for redressing or removing of a nuisance by a day, *sub pena 10. lib.* And the *non se saunce* thereof be afterwards presented, and the paine thereby becomes forfeited, this is a good presentment and the paine shall not be otherwise assayed, and the Lord shall clearly have an action of debt, 23 H. 8. And the reason why such a paine is not assailable, is, For that the word (*asserre*) is as much as to say, to tax, or to assesse, *ponere in certitudine*, or *taxare*, and a paine for not doing, or not removing of a thing by a day, is, upon a presentment of a *non se saunce* by a lury, an immediate taxation and a certitude of assessment by the Countrey, and therefore needs not further or otherwise *poni in certitudinem*.

Bro. Leet 36.

In the case of assessment of a fyne by a Steward upon a tithingman, who would not present at a Leet. The Lord may bring an action of debt, and if the Defendant tender the wager of Law, it was *optima opinio* that a wager of law did not lye in that case, for that the Leet was a court of Record, 10. H. 6. 7.

Co. li. 11. fo. 42.

As in these and other paines and fynes of like nature in a Leet an action of debt doth lye, so also for them, and for all amerancements in a Leet, distresse is incident of common right, that is, by

by the Common Law a Lord may distreyne the goods of the delinquent.

In *Gristlies* case, Trin. 30. *Eliz.* where doubt was made, whether a Lord of a libertie might distreyne of common right, for a fyne imposed in a Leete by a Steward for contempts and misdemeanors: It was resolved, that if for lesser things, *S.* for amerciaments of offences, *extra curiam*, distresse was incident of common right, by an argument *a fortiori*, in a case of Fynes imposed for offences, committed in the same court distresse shall be incident, For,

Co. l. 8. fo. 33.

Quod licitum est pro minore, & pro majore licitum est. And nothing is more naturall to be punished by a Court, than offences committed in the same Court. And it were a hard thing to drive a Lord to his action of debt for every pettie fyne or paine, and in case the Lord doe distreine, hee may sell the distresse, or put the same in pound at his pleasure. For the place of distresse whether upon the offenders lands within the view, or upon his goods in any place within the precinct of the Leet may arise a question, which was resolved, 2 *Hen. 4.* 24. *Bro. Leet.* 28. That for amerciaments in a Leet or Hundred, a man may distreyne the beasts of the offenders in any place within the precinct of the Leet or Hundred, and *a fortiori* (as is before) for fines and pains in a Leet.

The Lord may distreyne in the high-way for an amerciament in the Leet, 34. *Ed. 2.* 19. *Edw. 2.*

Antiquity, Authority,

Or the goods of the offender in the custodie of another man, 47 *Ed. 3 fo. 12. Krenebyes case*, And the reason for that the offence doth arise upon the person of the offender, and ought to be estreated upon his person, and not upon the issues of his lands, 41 *Ed. 3. 26.*

In some cases the distresse may be of another mans goods upon the lands of the *amercee*, As if a man do hold lands of a Leet, by the service of Cryer of the Court, or the like, and is amerced for neglecting of his service, A Lord may distreyn the beasts of any other upon the land so holden, 47 *Edward 3 folio 13. 12 Henry 7. 15.* And the reason for that the offence doth arise *ratione tenuræ* or *soli*, 41 *Edward 3. 26.*

Certaine Cautions in the taking of Distresses.

A Lord cannot distreyn for amerciament in a Leet in any lands seised in the Kings hands for the Kings debt, for that the place is privileged, and the right of distresse suspended for that time, for as the King cannot bee amerced, so by consequence his lands are out of the Iurisdiction of a Leet, and the distresse tortious, and so was the opinion of *Finchden* in the Case of *Sudbury Bishop* of London upon a Replevin *inter Norwiche & Manley*, 47 *Edward 3. 13.*

He cannot distreine the Horse of a stranger in the Stable or osterie of the partie amerced, nor the

the garment of another in a Taylors shop, where the Taylor is amerced, and so was the opinion of *Keble*, 10 *Henry* 7. 21.

If upon a distresse taken the amerciamment, fine, or other duetie be rendered, and satisfaction offered, it ought to be accepted, and in case it be refused, and the distreynce put to a Replevin, the Lord shall not have retourne, For a distresse is but a gage or pledge for a duetie, which being offered, the Lord ought to deliver the gage. Bro. Distresse 8:

A Lord may not distreyn a milstone, parcell of a mill, nor doores, nor windowes, nor any thing that is fixt unto, or parcell of a freehold, 14 *Henry* 8. 25.

The distresse ought not to be excessive, for excessive distresse is forbidden by the common law, 41 *Edward* 3 folio 26. As for the amerciamment of two shillings, or such like, to take two or three Horses, were outrageous and excessive.

The last act or period of proceedings in a Court Leete is afferment.

Afferment is as much as *ponere in certitudinem seu taxare*, to asseſſe or taxe, derived from the French word; The Subject of this Act is called amerciamment, in latine *misericordia*: and it is described by an ancient writer, *Glanvill lib. 9, cap. 11*, in this wise, *Est autem misericordia*.

dia Domini Regis quâ quis per iuramentum legalium hominum de vicineto, eatenus amerciandus est, ne aliquid de suo honorabili contememento amittat. And by the Statutes of Magna Charta, cap. 15, and Westm. 1 c. 6. *Liber homo non amercietur, &c. nisi per sacramentum parium suorum, viz. proborum & legalium hominum de vicineto, qui facultatum suarum noticiam habeant pleniorē,* as it is recited by Fleta, lib. 1. cap. 48. That is, Amerciaments are to be assessed by the oath of equals, good and lawfull men of the vicinage or neighbourhood, who have the better knowledge of the estate and abilities of the Amercees.

The parties to this act are the Steward and the Countrey (or *pares*) And these *pares* or *probi homines*, are according to moderne practice chosen at the *Leet*, out of the Jury by the steward, to tax and asseire the amerciaments indifferently, not to wrong any for hatred, nor to spare any for favour, &c. which oath by Bracton lib. 3. cap. 1. fo. 116. is thus declared, *Et ad hoc fideliter faciendum* (speaking before, *Ad hoc videndum qualiter quis sit amerciandus &c.*) *affidabunt amerciatores, quod neminem gravabunt per odium, nec alicui deferent propter amorem, Et quod celabunt ea quæ audiverunt,* 38 Edward 3 fo. 3. 9.

As if one be amerced upon a presentment in a *Leete*, for not repairing a bridge or a highway, The manner of entry up on the Court booke and Rolles must bee *Ideo in mia. et amerciamentum inde afferatur per afferatores in eadem Curia ad tunc electos et iuratos ad 20. s. Rastall intrat, sit, trus in Amerciam. 2.*

So

So that the Steward cannot taxe or asserre an amerciament upon the presentment of a Iury, if he doe, it is void in law, and lyeth not against the partie amerced, The Steward is only to record and enroll the Amerciaments asserred, and truly and justly to estreate them to the Bailiffe of the Manour to be by him distreyned for and levied for the use and benefit of the Lord.

This last Act of Taxation and recording thereof doth determine the judicall part of a Court leet, and after judgement must follow execution, wherein the life and vigour of all lawes doe depend.

*The ministeriall part of a Court Leete in the
levieing of fines and amerciaments
assessed.*

THis part or act hath a double relation, 1 To the Lord, 2 To the Bayliffe. The Court is the Kings, but the emergent profits formerly described by two remedies, *s.* 1 Fine, 2 Amerciament, belongs to the Lord, and for that they doe arise out of offences, which concerne the King and Common weale, the Lord is bound both in Law and conscience not to bee too prone in remitting of them, especially in those cases which concerne the King immediately as in his prerogative touching the oath of legiance, or immediately in regard of the Common wealth, whereof the King is *caput et custos*,
as

as touching fines upon delinquent Officers and Ministers, Amerciaments in cases of common Barretors, Drunkards, false and double Weights and Measures, deceits and corruptions in Victuallers, Tradesmen, and Artificers, and such like enormous offences, which in their qualitie are exemplary, and have generally an interest in the publike calamities of Church and State: As also in Amerciaments, for not repairing of Bridges, Causes, Highwayes, and many more of that nature hereafter insuing in the second part of this Tract, which *ratione communis nocuentis*, deserve no manner of favour or indulgence. The best excuse that a Lord can plead for himselfe in such cases of remission of amerciaments, is but *misericordia*, And that excuse is taken away by a former act of mercy and moderation, in the asserors or equals, who being astrict by a solemne oath, *quod neminem gravabunt*, &c. That they should neither surcharge for hatred, nor detract or diminish for favour.

The law presumes, That as they ought, so they did asseffe them mercifully, and after a solemne and judicall mercy, *Non opusest extrajudiciali misericordia*.

2 The second relation concernes the Bailiffe, who must be true, faithfull, and vigilant (observing the Cautions before prescribed) in levying of distresses, Hee must not bee exoculated with common rurall bribes, Bacon, Cheese, &c. as that he cannot see a Iury man in his right place

to returne, nor any goods or cattell to distreine, his office is also described by *Fleta*, lib. 2. ca. 67. whereof so much may be applyed, as doth accord with the practice of this age. *Ballivus cuiuscunque maner i esse debet in verbo verax, et in opere diligens et fidelis, Ac pro diserto appruatore cognitus, plegiatus et clericus, qui de communioribus legibus pro tanto officio sufficienter se cognoscat, Et quod sit ita justus, quod ob vindictam seu cupiditatem, non quarat versus tenentes Domini nec alios, &c.*

A speciall caution for Lords of Leets, against the Farming out of their perquisites.

By the Statute of 4 Henry 4, cap. 5. the Sheriffe is not to let to Farme his Baillywicke to any man for the time that he occupieth such office. By the Statute of 23 Henry 6, cap. 10, For theeschewing of extortion, perjurie and oppression, it was (*inter alia*) enacted, That no Sheriffe should let to farm in any manner his Countie, nor any of his Baillywicks, Hundreds, nor Wapentakes.

These Statutes doe extend only to Sheriffes and not to Lords of *Leets* and Manours, but as *Leets* and Hundred Courts had their derivation of authoritie from Sheriffes Tournes and Countie

. 1. Jac.

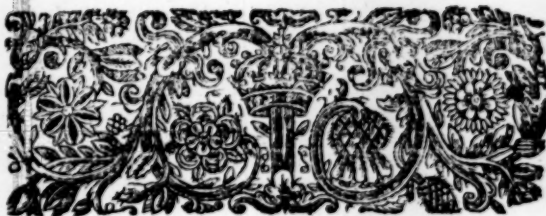
tie Courts, So they had in proceſſe of time by example (which in evill actions is alwaies a better miſtreſſe than in good) a derivation of their abuſes, and corruptions. This growing miſchiefe, the wiſedome of the Parliament, 1 *Jaco.* well obſerving, and that Stewards of *Leets*, and Court Barons had in their owne names; or in the names of ſome other to their uſe obtained and gotten diſverſe grants of all the profits and perquiſits of ſuch Courts whereof they were Stewards, out of a greedie deſire of undue and extraordinary gaine to themſelves, whereby many of his Majeſties ſubjects were unjuſtly vexed, and by grievous fynes and amerciaments, unduely puniſhed to their great wrong and impoveriſhment, did therefore reſtraine all Stewards, Deputy-stewards or Vnder-stewards, that they ſhould not directly or indirectly, in their own names or in the name of any other, take, receive, or make benefit, to his or their owne uſe, in monny, goods, or any other thing to the value of 12. pence or more, by vertue or colour of any demiſe or grant then after to be made, of any the profits, perquiſites or amerciaments of any ſuch Courts whereof they were Stewards, upon pain to forfeit for every ſuch offence 40 pound, and to be diſabled for ever after to bee Steward of ſuch Court, or of any other. This Statute doth in the penaltie point only at the Steward, and therefore I may be bold to free the Lord *a pena*, but I cannot *a culpa*, For doubleſſe, he is *particeps criminis*, and as guiltie of wronging and im-

poverishing the Tenants by the concession, as the Steward by the acceptation thereof. The law would not intrust a Lord to be Iudge in his owne Courts, in regard the profits and perquisites were to accrue unto him, and therefore according to the rule of *Fleta*, *Provident sibi Dominus de Senescallo, &c.* A Steward ought to bee a man indifferent betweene the Lord and the law, being nominated and appointed to his place by the one, be it by word or writing, but credited and invested in authority by the other; Hee receives his name from the Lord, but his power and facultie from the law; He is called in latine *Senescallus*, a word of many significations, derived from the word *Schule*, an officer or governor, and *Sen* (as some would have it) an ancient word for justice. So as in this Case, he is *officiarius justitie*, and therefore not fit to be a Iudge, and a perrnor or proprietarie of the perquisites of his Iudgement, the reason is sufficiently set down and illustrated in the Statute. Though Stewards only be by that act of 1 *Iaco.* debarred from being farmours of amerciaments and perquisites, it is is dangerous and inconvenient, That the Lords Bailiffe should be capeable of any such grant (a thing now too common) for as the one may be too excessive and oppressious in imposing, So the other may be in distreyning. And if the Bayliffe once get a power of dispensation of those things at a cerraine Farme, he may be partiall and corrupt in returning of Iuries, and may assume the greater libertie and priviledge to be

Antiquity, Authority,

remisse in that, and other services to the hindrance and prejudice of his Majesties service in regard of his Farmeship of the profits, and by consequence of the fines which might be imposed on him, by the Steward for his wilfull or negligent offence.

The



The Second part of this Treatise,
Which Containes,
Subjectum visus Franciplegus,
O R,
The matters there inquirable,
and presentable.



Therto I have onely touched the
Antiquitie and Authoritie of
Court Leets, and the first institution
or derivation of that, and all
other subordinate Courts of Justice.
Not unaptly nor unnecessarily
will follow, the usefull handling of the
Subject of the Court Leer, or the matters
and misdemeanors whereof that Court
doth challenge peculiar Jurisdiction,
which doe all of them depend
either upon the libertie of the
Common law, or upon the power of
Statute law.

The first Statute law that directs the matters
of

of inquirie at the Leet, is the Act for vie w of Franckpledge, made 18 *Edw.2.* which was but an affirmance of the Common law ; and in that Statute are comprised and enumerated 33. severall particular branches of misdemeanors inquirable at the Leet, which so farre as they may concerne the moderne Iurisdiction of this age, and are neither obsolete nor antique, yee shall finde in this insuing tract ; according to a prescribed method, though distinguished from the rest by quotations of the Statute, and they are divided into two sorts.

1. They are either matters inquirable, and not punishable, as *Treasons*, *Petty treasons*, *Præmunires*, and *Felonies*, and all of them to be published for the disciplining of his Majesties leige people, that they might not plead ignorance of the lawes of the Realme ; But (as for *Petty treasons* and *Felonies*) for that they are *contra Coronam & dignitatem*, by the Statute of 1 *Edw. 3 cap. 17*, which literally doth command, That all Sheriffes and Bayliffes of liberties, and all others which take Indictments at their Tournes, or elsewhere, where indictments ought to bee taken, shall take Indictments by rolle indented, whereof one part shall remaine with the indictors, and the other part with him that taketh the inquest, so that the indictments shall not be imbezelled, as they have beene in times past, and so that one of the enquest may shew the one part of the

1 *Edw. 3. C. 17*

the Indenture to the Iustices when they come to make deliverance.

Yet this Statute by the generall words doth extend to Stewards of Leets and all others; ^{1 Rich. 3. c. 4.} Also such inquisitions in Tournes, and consequently in Leets, are void, if every of the Indictors S. (Jurors) are not of good fame, and may expend 20. shillings by the yeare of Freehold, or 26. shillings 8. pence, of Coppihold in the same Countie, and this by the Statute of 1 R. 3 cap. 4. *Stamf. plit. Coron. li. 2, cap. 24, fo. 85, 86, 87.*

2. The second sort are matters here inquirable, presentable, and punishable.

For the first it may seeme unnecessary to enquire at the lawday of those things which the Court hath not power to correct and punish, and which the authoritie of *Iustices of peace* doe daily meet with, But there are two reasons to cleare the doubt and approve the inquiry of them.

1. The benefit of Escheats of lands and forfeiture of goods and Chattells: for upon conviction of any offender, in cases of Felonies, their lands doe escheat unto the King if they bee holden of him, or to the Lord, of whom they are holden, Saving to the King, the waste thereof for a yeare and a day, and therefore it is to be inquired what lands, tenements, and goods the offender hath, for they accrew to the

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the King, if the Lord hath not a grant of *Cattalla felonum* by Charter from the King, 9 H.7, fo. 23, 29.

Justice Flem-
ming.

2. The second reason *Id.* from the mouth of a *Reverend Iudge*, who in a speech of his concerning the necessitie of *Leets* and law-dayes, said that a *Leet* was *Schola insigniendi juvenes*, a Schoole to direct and instruct young men to know the ancient lawes of the Kingdome, and to prepare them for greater employments at greater meetings, as the *Assises*, *Gaole deliverie* and *Sessions* of the peace.

The first sort of offences which concerne power of inquirie, but not of punishment, are Treasons, Premunire, Pettie-treasons, and Felonies.

High Treasons, which *Glanvill lib. 1, cap. 2*, calls, *Crimen laesæ Majest. ut de nece vel sedic. personæ Domini Regis, vel regni, vel exercitus*, *Britton ca. 29*, title *Tournes de Viscounts*, giveth directions for inquiring at the Sheriffes Tourne of the mortall enemies of the King or the Queene, or their children, or of their consenters.

And long after that, by the Statute of 25. *Ed. 3, cap. 2*, a declaration was made what offences should be adjudged, *High*, or *Pettie treason*.

If any person doe imagine or compasse the death of our Lord the King, or of the Queene, or of

of their eldest sonne and heire, It is *High treason, Crimen laesæ Majest.* by the ancient common law, For *Princeps censetur una persona cum ipso Rege.*

Or if a man doe violate the Kings compani-
on, or the Kings eldest daughter unmarried, or
the wife of the Kings eldest sonne and heire.

Or if a man doe levie warre against the King
in his Realme, or be adherent to the Kings ene-
mies, in his Realme, giving them aide or com-
fort there, or elsewhere.

*Other Treasons which doe not touch the person
of the King so neere.*

IF any counterfeit the great seale, privie seale,
or the money of this Realme.

Or if any bring false money into this Realme
counterfeit to the mony of *England*, knowing it
to be false; to marchandize, or make payment
in deceipt of the King, and his people.

If any doe falsly forge or counterfeit any
coine of gold or Silver, which is not the proper
coine of this Realme, and is or shall be currant
within this Realme.

If any doe forge or counterfeit the sign man-
nall, privie signer, or privie seale.

If a man slay the Chancellor, Treasurer, or
the Kings Iustices of the one bench, or the other,
Iustices in Eyre, or Iustices of Assise, or any o-
ther

H

ther

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ther Iustices being in their places doing their offices.

● All those before cited and all ayders, procurers, and abbetters, shall be deemed and adjudged Traitors, and shall incurre all paines and forfeitures, as incases of High treason is used and ordeyned, 1 *Mar. ca. 6.*

If any for wicked lucre or gaine doe clip, wash, round, or file any monie, which is or shall be the coine of this Realme, or the monie thereof, or the coines or monie of another Realme, which is or shall be allowed to be currant within this Realme, or the Dominions thereof, it is high treason, 5 *Eliz. II.*

The forfeiture by the Statute is of goods, but of lands only during life, and no corruption of blood, nor forfeiture of dower.

It was first declared high Treason, 3 *H. 5.* afterwards abrogated, 1 *Mar. I.* and revived by this Statute, of 5 *Eliz. II.*

Premūnire and Treason.

5 *Eliz. c. I.*

FOR the preservation of the dignitie of the imperiall Crowne of *England*, it was enacted, 5 *Eliz. ca. I.* That if any person of any estate, dignitie, or degree soever, should by writing, ciphering, printing, or preaching, deed or act, advisedly and wittingly extoll or set forth the authoritie

ritie of the Bishop of *Rome*, used or usurped within this Realme, or any the Dominions thereof, every such person, their abettors, procurers, and counsellors, being lawfully indicted or presented within one yeare after such offence committed, and being lawfully convicted or attainted shall incurre the penaltie of *Premunire*, provided by the Statute of Provision, made *Anno 16 Rich. 2.*

And if any person, or persons, their abettors, or procurers, after such conviction and attainder, doe estoons commit the same offences, and be thereof duly convicted and attainted, shall incur the paines and forfeitures of high Treason.

In like danger are they, who refuse to take the oath of supremacie prescribed, 1 *Eliz. 1.*, which for the first offence is *Premunire*. And if any the persons appointed by this Act, to take the said oath, doe after the space of three moneths, next after the first tender thereof, the second time refuse, or doe not take and pronounce it, shall also be adjudged in the case of high Treason, and this Statute requires a publication hereof at the Leete.

But this Act shall not extend to make any corruption of blood, disinherison of any heire, forfeiture of any dower, nor the prejudice of any right or title of any persons, other than the right or title of the offender during his, her, or their life only.

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Nota, the penaltie in a *Premunire* is described
 23 *Edward* 3. 1, and 16 *Richard* 2. 5, to bee
 out of the Kings protection, to forfeit lands,
 goods, and chattels, and their bodies to bee
 taken, imprisoned, and ransomed at the
 Kings pleasure, But by this Statute of 5 *Eliz.*
 1, It is not lawful to kill any attainted in
Premunire.

Pettie Treason.

IF any servant kill his or her Master or Mi-
 stresse, or a man secular or religious killeth his
 Prelate or Ordinarie, to whom he oweth faith
 and obedience, it is pettie treason in them and
 the abbetters, 25 *Edward* 3, 2.

If a woman killeth her husband, in regard of
 the subjection and obedience which she oweth to
 him, it is petty treason, 19 *Henry* 6, fol. 47.

If a servant after he bee out of service killeth
 his Master, so as it be done out of a prepen-
 sed malice whilest he was in service, It is pettie trea-
 son though not expressly within the letter of
 the Statute of 25 *Ed.* 3.

It is pettie treason in a sonne who killeth his
 mother, and he shall be drawne and hanged, and
 so was the opinion of *Thorpe*, 12 *Edward* 3, 17.
 where a man killed his mother, took Sanctuary,
 and was drawne from thence and convicted,
Crompt. Inst. fo. 15.

Note

Notethat in all *Petty Treason* Felony is included, but not *à contra*, and it was affirmed 22 li. *Aff.* that a pardon of all felonies would serve for *Petty Treason*, which is the reason that all *Petty Treasons* are inquireable as felonies in the Tourne and Leet.

The escheats hereof pertain to every Lord of his owne fee, and the reason is, because such Treason doth not touch the King himselfe.

Felonies.

ALL Felonies at the Common law are here inquirable as felonies, saving the death of a man and Rape, which are here to bee inquired as trespassse, 7 *Henry 6*, fo. 13. 6 *Hen.* 7, fo. 4, 41 *Aff. plit.* 30.

Of Felonies here inquirable there are these foure severall sorts insuing, viz.

- 1 Such as doe concerne the ademption of Life.
- 2 Or hurt of bodie, without privation of Life.
- 3 Or the spoliation, and taking away of goods
- 4 Or the taking away, wasteing, and consuming of life, bodie, and goods.

All privation of Life is comprehended under the generall name of *Homicide*, But as one writes,

Ex

Shenly l. Regie
Majest.

Ex diversa interficientis intentione hoc diversas & appellationes & causas habet, The intention of the *Actor* doth alter the appellation of the *Act*. A learned Writer of the lawes of *Scotland* doth set forth *duo genera homicidii*, one which is called *Murdrum*; and the second sort, which is called *simplex homicidium*, and both are inquirable at the Leete as *Bloodshed*.

Murder.

M*urther* is, where any of prepenſed malice doth kill another feloniously (*felleo animo*) whether it be openly or ſecretly, and whether the partie be an *Engliſh* man, or any other whatſoever, ſo as he liveth in the Realme under the Kings protection. And all homicide which is done in this manner is called *murder* to this day for the name of *murder* was never changed, but: the law doth retaine it continually for the hainouſneſſe of the crime, to put a difference between that and other homicide, and as a *Civillian* writes, *Quicquid e præcedenti malitia, vel ferro, vel veneno, vel modo quocunque perpetratur, illud murdrum dicitur.*

Cowel inſtit.

It was the crying ſcarlet ſinne of *Caine* in the firſt infancy of the world, and hath beene, and is ſo horrid and deteſtable, as that by the Statutes of 2 *Edward* 3, 2, and 14 *Edward* 3, 15, a Charter of pardon was not to be allowed in ſuch a caſe.

By the Statute of 13 *Richard* 2, Stat. 2 c. 1, It was

was provided, that if the charter of the death of a man were alleadged before any Justices, and if upon a good inquest of the *Vifne* where the dead was slaine, they did finde that it was done by a waite, assault, or malice prepenfed; the Charter should be disallowed, and further it should bee done as the law commanded.

Hence it was that a charter of pardon of all felonies will not discharge a *Murther*, without expresse words.

And here in the dutie and legiance of a Subject, I cannot pretermitt the remembrance of his now gracious Majesties tender and incomparable care in pursuance of the true intention of those ancient lawes, by rejecting and denying all suggestions and suites for pardons in cases of *murder*, *rape*, and such like heinous crimes, which to the comfort of all his true and loyall subjects hee hath sufficiently demonstrated, by the equall and exemplary distribution of his justice, aswell to the tallest Cedars as to the lowest shrubs of his Kingdome.

Man-slaughter.

ALL *simplex homicidium* or Manslaughter are distinguished from Murders, by reason they are done suddenly, and upon hot blood without malice forethought. In ancient times, if a man did

did lye in waite to kill another, it was felonie, *quia voluntas pro facto*, but now *exitus in malificiis spectatur, & non voluntas duntaxat*.

Thesetwo are called *homicidium voluntarium*, the first aggravated by the name of *Murder, ex premeditato*, which (as *Bracton* noteth) is committed, *Ex odio vel causa lucri nequiter & in Felonia*.

The second in regard of the sudden act not premeditate nor forethought, is qualified by the name of *Manslaughter*, and hath the benefit of *Clergie*, in resemblance to the law of *Moses*; who so killed his neighbour ignorantly whom he hated not in times past had the favour to flye unto one of the Cities of refuge, *Dent 19.4.*

There are two other sorts of *Homicide*, one *ex necessitate*, in defence of a mans selfe, the other, *ex casu*, or by misfortune, both here inquirable by the common law.

In the first, the necessity must be so great, as that it may be deemed inevitable, or else that *homicide* is not excusable, the definition of it is rendred by *M. Stamford, li. 1, cap. 7.*

If a man make an affray upon another, and the party assaulted doth flie so farre as he can, for safeguard of his life, so that hee bee driven to a streit, beyond which he cannot escape, and the other still continue the assaulting of him, In this case if he strike and kill the assaultant, It is homicide *se defendendo*.

But

But the matter must be specially found upon the Inquisition or Indictment. And 2. presidents of such inquisitions are set forth by Master *Weston*. Indictments.

Yet he forfeiteth his goods, and must purchase his Charter of pardon for the same, by the Statute of *Gloric. cap. 9.*

Homicide casuall or by misfortune or misadventure, is defined by *Moses*, the patterne for all Law-makers, *Dent. 19.5.* When a man goeth into a wood with his neighbour to hew wood, and his hand fetcheth a stroke with the Axe to cut downe the tree, and the head slippeth from the helve, and lieth upon his neighbour that hee, he shall flee to one of those cities and live.

So that in this case or the like, as throwing a barre, or stone, or shooting an arrow at a marke, or in doing any other lawfull act, without an evill intent, it is homicide by misadventure, and the Actor shall (instead of *Moses* Citie) have his refuge to the mercie of his Majesties crowne for a pardon of grace, by the Statute of *Gloric. c. 9.* as in the case of *se defendendo*.

But note as a rule, in all unlawfull actions or attempts the event is not excusable, as if two or more commit an affray, and a third person comes betweene them to keepe the peace, and is slaine, albeit this accident was without an evill intent, yet in regard of the unlawfulness of the occasion (as the affray, *contra pacem*) It is felonie

nie in the manslaughter, and not misadventure, *Fitz.
tit. Coro. 180. 22. lib. Ass.*

*Felonies which doe concerne the hurt, dishonour,
and detriment of the bodie, without
privation of life.*

Rape.

IF any man ravish any woman, be she widow,
or maid, she not assenting before nor after,
or if it be done with force she assenting after,
every such person and the aiders and abettors
are in the case of felony, by the statute of *Westm.
2 cap. 24.*

A pardon of all Felonies in generall words,
doth not discharge a Rape, without speciall
words by the Statute of *25 Edw. 3. ca.* And
the benefit of Clergie is taken away by the Sta-
tute of *18 Eliz. cap. 6.*

It was ever anciently enquirable at the Tourn
and Law-day, where it was not presented
before the Coroner, *18. E. 2.*

Vpon a presentment before the Sheriffe in his
Tourn, and returned upon a *Certiorari* into the
Kings bench, of a Rape feloniously committed,
it was the opinion of *Hussie* chiefe Iustice, and o-
ther Iudges, *22 Edw. 4. fol. 22.* that the present-
ment

ment was void, and that the power of a Sheriffe in his Tourne, and of a Steward in the Leet, being all one, they had no authoritie to enquire of any things, but such as were felonies, and trespasses by the common Law. Yet it seemes the wisdom of the common Law thought fit to continue and maintaine the enquire of that and other offences at Tourns and Leets, in the same nature and condition as they were before the alteration by Statutes. And though the Statute lawes have in many cases enlarged and extended the punishment, yet have they not abridged the ancient discipline and jurisdiction of those Courts.

All Rapes are here inquirable as trespasses, and so it appeares by *Fitz.* in his Court Leet, and in *M. Kitchin*, and all other tracts of this nature.

Phisognomie defaced or disfigured.

IF any put out any mans or womans eyes, or cut out their tongues, or noses, or disfigure any member to the intent they should not see, nor speake, it was and is inquirable as bloodsheds, *Fitz. Leet 1 Maria.* And yet by the Statute of 5 Hen. 4. cap. 5. The malicious cutting out of the tongue, or pulling out of the eyes of the Kings liege people, were made felony, and not without good ground, sithence they are the principall members to glorifie almighty God:

Antiquity, Authority,

The eyes to looke up to heaven, *I will* (saith the Psalmist 121.) *Lift up mine eyes unto the hills from whence commeth my help,* And Psal. 123. *Ad te levavi oculos meos, Vnto thee lift I up mine eyes, O thou that dwellest in the heavens.*

The tongue to chaunt and send up the sweet incense of prayers and prailes to the mercie seat of heaven, It must be *malice in excesse*, that dare adventure the depriving and defacing of those instruments and organs of Gods glory.

Felnies which concerne the taking away, wasting, and consuming of Life, Bodie, and Goods.

Sorcerers, Conjurers, and Witches.

ALL Sorcerers, Conjurers, and Witches, which sort of offenders were by the common law guilty of felony, and were to be burnt; *Fitz. Nat. fo. 269.* who cites for his authority *Britton lib. 1. cap. 17.* It was death by the law of *Moses, Thou shalt not suffer a witch to live, Ex. 21. 18.*

A man or woman that hath a familiar spirit, or that is a wizard, shall be surely put to death, they shall stone them with stones, their blood shall bee upon them, Levit. 20. 27.

For the repressing of those abominable offences, divers lawes were made 33. *Hen. 8. 8.* and diverse other succeeding statutes, All repealed,
5 *Eliz.*

5 Eliz. 16. And that Statute adnulled by *An. 1 Jacobi* 12. By which for the better restreyning the said offences, and more severe punishing the same, It was enacted,

That if any should practise or exercise any invocation, or conjuration of any evill and wicked spirit.

Or should consult, covenant with, imploy, or reward any evill and wicked spirit, to or for any intent or purpose.

Or take up any dead woman or child out of their grave or other place of rest, or the skin, bone or any other part of any dead person, to bee used in any manner of Witchcraft or Sorcerie:

Or shall use or exercise any Witchcraft, Sorcerie, Charme or Inchantment whereby any person shall be killed, destroyed, wasted, consumed, pined or lamed in their bodies, or any part thereof,

It shall be felonie in them, their aiders, ab-bettors, and counsellors, without privilege of Clergie or Sanctuary.

And if any by such practises shall take upon them to declare where any treasure of gold and silver should or might be found, or had in the earth, or other secret places, or any goods lost should be found.

Or to the intent to provoke any person to unlawfull lust.

Or whereby any person should be destroyed, hurt, wasted or impaired in their bodies, cattell,
or

Antiquity, Authority,

or goods, although the same be not effected and done.

The first offence is imprisonment for one whole yeare without baile, and once in every quarter of that yeare to stand in the Pillory in a market towne, in open market or faire by the space of six houres, and there to confesse their offence.

And the second offence felony, without any priviledge of Clergie or Sanctuary.

This Statute so exactly deciphering these offenders, doth seeme to receive its light from the Leviticall law, *Deut. 18. vers. 10, 11, 12, Those that passe through the fire, that use divination, or are observers of times, or an inchanter, or a Witch, or a charmer, or consulter with familiar spirits, a Wizard, or a Necromancer, all that doe these things are an abomination to the Lord, &c.*

These offences are inquirable at the Tourne and Leet by the Common Law.

Felonies which concerne the goods of any person, and first of Gods House.

Sacriledge.

Sacrilegious robbing of Churches or Chapels, or other holy places, and taking away any ornaments out of them feloniously, is here inquirable as Felonie.

Such

Such as *Lycimachus* the wicked Church robber is described to be, *Maccha. 2. 4. 42.* who for his offence was stoned by the multitude.

Such offenders in our daies have not the benefit of Church or Clergie.

Frustra petit auxilium Ecclesie, qui peccat contra Ecclesiam.

Latrocinium. Theft.

ALL Theft called by the Law *Larceny, Latrocinium*, (which *Bracton* describes to be, *Contrectatio rei alienae fraudulenta, animo furandi, in viso illo, Cujus res fuerit*) is either *de re magna*, of any thing above 12 pence, or *de re parva*, under twelve pence.

But note that this *Contrectatio rei alienae*, must be of personall things, and not of reall things, as to cut downe a tree and carrie it away, Or to take away a boxe with Charters, Or to take and carrie away treasure trove, any wrecke of Sea, or wayfe or straves is not felony, *Quia Dominus rerum non apparet.*

Cut-Purses, or Pick-Purses.

AKinde of evill disposed persons, felons and theeves by the law, which commonly usurpe amongst themselves a wicked brotherhood, and live by the spoile of good and true
Sub-

Subjects, by felonious flights and devices, from which they have their appellation, they set up their shop every where, not only in places of commerce, as markets, and faires, and other popular meetings, but in the sacred places of pietie and justice, nay at the very execution of malefactors, which should bee a tertour to them. *Britton* cites the inquirie of them at the Tournes, and Stat. 8 *Eliz.* 3, bars them of their Clergie.

Petit Larceny.

Petit Larceny is *parvum Latrocinium*, of any thing under twelve pence, as Hens, Capons, Pigs, Geese, Chickens, Sheaves of Corne in harvest, and such like. And for such petty things, the rule of the Law, *Nullus Christianus morti tradatur, sed alio modo castigabitur*, which is now by whipping, for the Law will not suffer the least offence to escape without its proportion of punishment, *Ne facilitas venia, praebeat alii materiam delinquendi*.

Stamford.

Other sorts of Felonies.

Felonious taking of Doves in Dove-houses, so as they be not in their savadge or flight, for then they are *nullius in bonis*, is felonie, and by the common Law here inquirable.

Taking young Pidgeons out of their nests, or young Goshawkes in their nests, which cannot
 fly

fly nor goe, Tr. 18 Edward 4, 10 Edward 4, folio 15.

Taking fish out of a pond, stewes, or truncks, or any place set a part for a mans private propriety, and not in a common river, Or taking any Cignets, Swans marked, or Peacocks, or any tame domestlicke Deere, knowing it to bee domestlicke.

All other thefts, which are Felonies at the common Law, are here inquirable, To touch some few for instruction of youth.

If a Taverner put a peece of plate before one to drinke, who carries it away, it is felonie, because he had not the possession but the use of it.

If any Butler or Cooke who hath any vessels or plate to use, doth carrie them away, it is felonie, because the possession, was alwaies in the owner.

If I deliver the key of my chamber to another, and he goes and takes my goods out of my chamber, it is felonie.

If I bargain with one to carry certaine chests to a place, and hee taketh and carrieth them to another place, and breaketh them open, and taketh away the goods within them feloniously, and converts them to his owne use; It is felonie, for he did not pursue his Bargaine.

If I deliver a Tun of Wine to one to carrie, and he taketh out 20 Gallons, or more, or lesse, it is felonie.

Antiquity, Authority,

And in like case, If I deliver goods to one to carry to a place, and after he hath carried the same thither, he steales them away, it is felonie, for that the privitie of the deliverie was there determined.

To take the flesh of any tame or wilde fowle, or beast, (that is dead) out of the possession of another man.

Or to take the wooll from the sheepes back, or to take the skin or tallow, and leave the bodie behinde, is felonie, *Stamford fo. 25.*

Many more might be reckoned, but the distinction of *animus furandi* being observed; this may serve *instar omnium.*

Burning of Houses.

IF any shall feloniously burne any dwelling House, or any Barne adjoyning, or any stacks or mowes of Corne, neare any Barne or dwelling house in the night time, it was felonie at the common Law, and the offenders no way replevisable. As appeares by the Statute of *Westm. 1. cap. 15. No. M. 11 H. 7. fo. 1.* One indicted for burning of a Barne feloniously in the night time adjoyning to an house, was attainted of felonie by the common Law.

Bracton notes, that this *crimen incendii*, must be done *nequiter & in felonia, vel ob inimicitias, viz.* wickedly, feloniously, or for enmitie, otherwise (saith he) if it be done by chance or negligence *Tunc civiliter agitur contratales, &c.* An action of

of the Case lyeth, M. Britton li. 1. ca. 17. fo. 16. affirms that such felonious incendiaries were burnt, *For in quo quis peccat, in eo punietur, Fitzh. Nat. fo. 269.*

There are two grand felonies which commonly ayme at Contrectationem rei alienæ, and though little be acted, yet are they aggravated by the will of the offenders, viz. Burglary and Robbery.

Burglarie.

IF any man in the time of peace, after Sunſet, and before the ſun riſing (that is to ſay) in the night time, *cum facta ſilentia tectis*) ſhall breake any Houſes, Churches, Walls, Towers or Gates, with a felonious intent, to rob, or kill, or commit ſome other felony, though nothing be carried away, It is Burglary, the indictment muſt be *quod noctanter fregit.*

If a man hath a manſion houſe, and he and all his familie are (upon accident) abſent ſome part of the night out of the houſe, and in the meane time one comes and breakes the houſe to commit felony, it is Burglary, for although neither the owner nor any of his familie bee in the houſe, yet it is *domus manſionalis.*

By the ſame reaſon, if a man hath two houſes, and dwelleth ſometimes in the one, and ſometimes in the other, And in the night time when the family are out, one of them is broken by theeves, It is Burglary, *Co. li. 4 fo. 40.*

Bracton notes, that if the owner of a house in a case of *Burglary*, defends himselfe in his house, and the Burglar be slain, So as the owner could not otherwise defend himselfe, *invasor inultus remanebit*, the owner shall not be punished, For saith he, *Non est dignus pace qui non vult servare eam, &c.*

Robbery.

RObberie, or (as *Bracton* termes it) *rapine*, is when a man taketh any thing from the person of a man feloniously, though it bee but the value of a pennie, is here inquirable. The law was ancient (and so still remaines in the case of Burglarie) That if a man were taken *depradando*, or *deburglando*, though he tooke or carried nothing away, it was Felonie; it is otherwise now in the case of Robbery, unlessse something be taken away.

In both these the benefit of Clergie is taken away by the Statute of 18 *Eliz. c. 6.*

Accessaries before and after the Fact.

IN Felonies, there are and may be Accessaries, If one procure or command another to commit a felonie, though hee bee not present at it, when it is perpetrated, this procurer or commander is an Accessary before the fact.

If

If any person receive a felon having knowledge of the fact which he committed, or doe favour or aide him, he is an Accessarie after the fact, *Stamford fo. 40.* If there were no receivers, there would not be so many theeves.

In the arrest and apprehension of any the offenders before mentioned, the law is carefull to have them brought to examination and tryall, and to prevent all escapes which are either voluntarie or negligent, as also all rescous of felonies.

Escape voluntarie.

IF any bee arrested for felony or any other crime, and afterwards the partie in whose custodie he remaines, doth suffer him to goe at large whither he will, it is a voluntarie escape. And if the arrest of him (who escaped) were for Treason or Felonie, it shall be adjudged the like against him who suffered the escape, and so in a trespassse, *Et sic de singulis, Stamford fo. 33.*

Escape negligent.

Escape negligent, when one arrested for felony escapeth against the will of him who doth arrest or keepe him, and is not freshly pursued nor taken before the pursuer loseth the sight of him, though he after take him, It is
fine.

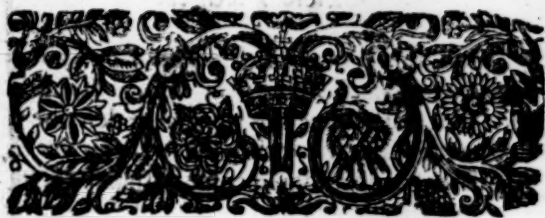
fineable according to the quality of the offence.

Rescue de felon

If any shall presume to rescue and set at liberty by fraud or force any person apprehended or arrested for felonie, it is felonie in the rescuer, and here inquirable,

1 Henry 7. 9.

The



The Second sort of Offences;
 which doe concerne the power
 of a *Leet*, both in inquirie, and
 punishment, and are either
 grounded upon the Common
 Lawes, or the Statute Lawes of
 this Realme, and may be redu-
 ced to these severall Branches
 hereafter following.

The KINGS Prerogative.

ALL Suitors and Resiants within the Pre-
 cinct of a Leet ought to appeare in per-
 son, and are presentable if they doe ab-
 sent themselves.

Chiefe

Antiquity, Authority, Chiefe Pledges.

IF the Capitall or chiefe Pledges of every *Decennary* viz: the Tething man, whose institution and office hath beene before at large described, doe not appeare, the ancient use of them was to take care, that none should come within the Seigniorie or libertie, but find pledges of their good abearing; If this law were well observed, the Justices of peace would not bee troubled with setting and dissettling of persons from parish to parish as now they are.

Legiance.

ALL and every male person of the age of 12 yeares and upwards abiding within a Libertie by the space of a yeare and a day, who hath not done his suit royall, *scil.* taken the oath of Legiance (before at large expressed) are presentable, 18 *Edward 2.* Every one of that age being a subject borne, must be *Iuratus in Decennaria*, *Brooke Leet 39.*

Lamb. Arch.

See *Canutus* Law 19.

Nos vero precipimus ut quisque annos ad 12 natus jurejurando fidem det, se in posterum tum furto, tum furti societate temperaturum.

All and every person or persons, who shall keep or harbour any such youths, and do not bring them in to be sworne, are presentable, *Brooke Leet 7.*

Com.

Common Nufances

ALL Purprestures are here inquirable; The word is not obvious to every countrie capacitie, *Glanv. li. 9, ca. 11.* thus defines it, *Dicitur autem propriè purprestura, &c.* It is properly called Purpresture, when any thing is unjustly usurped upon the King, as upon the Kings demesnes, or in stopping the publike wayes, or turning publike waters out of their right course.

Or when any man shall erect any thing in any Citie upon the Kings street, and generally, *Quoties aliquid sit ad nocumentum Regii tenti. vel Regia via vel civitatis.*

All Purprestures, are either *erigendo*, or *destruendo*, either in setting up, or casting downe something which may tend to a publike annoyance.

They are commonly made in Lands, Woods and waters, to the inconvenience of his Majesties leige people, by stockes and blockes, or levying any Dikes or Hedges, or by making or filling up any Dikes.

If any walls, houses, pales or hedges, be made and erected, or beaten and throwne downe, or any wayes and paths opened or stopped to the hurt of the people.

If any waters be turned or stopped, or diverted out of their right course, or if the common Rivers be corrupted and annoyed by whitetawing, lime, or such like.

L Or

Antiquity, Authority,

Or if any ditches mounds, and Rynes, which are the fences, of grounds be not duely scoured and cleaned.

Incroachment on High-ways.

IF any incroach upon the Kings high ways, or any carrion or unwholesome thing be cast into the same, or in the common streets to the annoyance of the people.

Bridges, &c.

IF any Bridges or Causeyes be decayed or broken, inquiry is to be made of the defects, and who ought to repaire them.

Watering with Hempe, &c.

IF any person do water any Hempe or Flaxe in any river, running water, streame, or brooke, or other common pond, where beasts doe use to drinke, it was and is a popular nufance at the Common Law, and inquirable and amerciable at the Leet.

33 H. 8. c. 17.

But by the Statute of 33 H. 8. cap. 17. the partie offending doth forfeit for every time so doing 20. shillings, the one halfe to the partie grieved, or any other that will sue for the same forfeiture in any Court of Record, Leet, or Law-day, by action of debt, bill, plaint, information or otherwise, and the other moytie to the King. As

As High-ways must not be incroached upon or annoyed, so they must be duely repaired and amended.

High-ways.

THere are two sorts of Highwayes, 1 *Chimini Majores*, 2 *Chimini minores*, The *Majores* are the foure great fosse wayes, whereof two extend through the Kingdome in length, and two in breadth.

The lesser wayes are such which leade from Citie to Citie, and from one Towne to another, *per quos mercata vehuntur*, &c. for conveying and carrying of wares and merchandize from market to market; and concerning these, it was the Law of King Edward Confessor, *Si quippiam operis ad eorum perturbationem erigatur solotenus deponatur, & chimini more solito repatentur*, which is agreeable to the common Law at this day.

And for that the highwayes grew very noysome and tedious to travell in, and dangerous to all persons, passengers, and carriages, It was enacted, That the Constables and Churchwardens of every parish within this Realme, should yearly upon tuesday or wednesday in Easter weeke, call together a number of the parishioners, and elect two honest persons of the parish to bee surveyers and orderers for one yeare, of the workes for amendment of the high wayes in their parish, leading to any markettowne.

That the surveyer shall have authoritie to or-

der and direct the persons and carriages which shall be appointed for those workes by their discretion, and shall take upon them the execution of their offices upon paine of 20 shillings every one making default.

That Stewards of every Leet have power to enquire by the oathes of the suitors, of all and every the offences, that shall bee committed against every point and article of this Statute, and to assesse such reasonable fynes and amerciaments as shall be thought meet.

That the Steward of every Leet shall make esttraets indented of all the fynes, forfeitures, and amerciaments, for the defaults presented before him, and shall deliver one part signed and sealed by him to the Bailiffe or high Constable of every Hundred, Rapelathe or Wapentake, where the defaults shall be presented, and the other part to the Constables and Churchwardens of the parish, wherein the defaults were made, the same to bee yearly delivered within sixe weekes after *Michaelmas*, to bee bestowed on the high wayes in the said parishes.

That the Bayliffe and head Constable shall at least once every yeare, betweene the first of March and the last of Aprill, make true account and payment of all such summs of money to the Constables and Churchwardens of every such parish, or two of them, as hee shall have collected upon any the said streets, upon paine to forfeit, 40. shillings for every time, to be bestowed as afore said.

This

This Statute by a Latter of 5 *Eliz* 13. was 5. *Eliz* 13. continued and the authoritie of supervisors enlarged, for the taking and carrying away of rubbish, or the smallest broken stones, of any quarrie or quarries within any such parish, without licence, controllment or impeachment of the owner or owners, so much as shall bee deemed necessarie for the amendment of high wayes, and in default of any such quarries, to digge in any private groundes, for any gravell, sand or sinder, and to gather stones lying upon lands or grounds, so as the said digging bee not in the garden, house, orchard, or meadow of any person or persons, and under other provisions in the said statute mentioned.

It is further enacted, that the heies, fences, dikes or hedges, next adjoyning on every side, to any high or common fairing wayes, shall from time to time, be diked, scoured, repaired, and kept low, and all trees and bushes growing in the high wayes, cut downe by the owners of the ground or soile, whereby the wayes may be open, and the people have the more readie and easie passage in the same. If any person shall not doe it, he forfeits, 10. shillings, 18. *Eliz*. 9.

There must bee yearly, six dayes used and employed in the reparation and amendment of the high wayes, before the feast of the nativitie of *S. Iohn Baptist*, and knowledge thereof to be given in the Church the next Sunday after *Easter*, and upon the said dayes the parishioners shall endeavour themselves to the mending of the
wayes

wayes, and shall bee chargeable as followeth, *viz* Every person for every plow-land in tillage or pasture within the parish, And every other person there keeping a draught or plow, shall finde and send at every day and place, one Wayne or Cart furnished according to the custome of the Countrey, with all necessities meet to carry things, and also two able men with the same, upon paine of every draught making default, 10 shillings.

Every other householder, and every cottager and labourer, not being an hired servant by the yeare, shall by themselves, or one sufficient labourer, upon every of the said dayes, worke there every of the said dayes, upon paine every one making default, each day twelve pence.

Every person (except such as dwell in London) that shall be assessed in subsidie 5 pound in goods, or 40 shillings in lands, or above, and being none of the parties chargeable by any former law, but as a cottager, shall finde two able men every of the said six dayes to labour in the high wayes.

Every person having a plow-land in severall parishes, shall be chargeable to the making of the wayes where he dwelleth.

Every person keeping in his or their hands severall plow-lands, in severall parishes, shall be charged to finde one cart or waine furnished for the amendment of the high wayes within each severall parish.

All

All occupiers of lands adjoining to the ground so adjoining to any such high way, where any ditching or scowring should or ought to bee, shall from time to time ditch and scoure in his and their ground so adjoining, whereby the water conveyed from the high way over the ground next adjoining, may have passage over the said ground next adjoining, upon paine for every time, for every rod not so ditched and scowred 12 pence.

If any having any ground, adjoining to any high way, leading to any markettowne, shall cast or scoure any ditch, and throw the soyle into the highway, and suffer it to lye there by the space of six moneths, shall forfeit for every load 12. pence.

The moitie of the forfeitures by all these three severall Statutes, shall be to the Churchwardens to bestow upon the ways, and Stewards of Leets have power to heare and determine all offences, &c.

1, 2. Phil. Ma.
ca. 8.

1 Bliz. 13.

18 Eliz. 19.

Popular Annoyances.

ALL common or popular Nufances done to diverse and sundry of the Kings Subjects, are inquirable as this ancient Court, and so are all trespasses at the Common Law being popular.

Boun-

Boundaries.

IF any ancient bounds, metes, or landmarks be withdrawne and taken away, such as distinguish hundreds, parishes, tythings, Common, Common meadowes, and common fields to avoid confusion, and consequently dissention, are here inquirable, 18 Edw. 2.

Cursed is he that removeth his neighbours landmarke, and let all the people say, Amen. And it is commanded in Deuteron, Thou shalt not remove the ancient bounds which thy fathers have made.

It is to be observed that divisions by lots and boundaries, have beene ever held in great esteem in all ages, even amongst the Heathens.

For the taking away of a particular boundary or mete, which concernes onely one man, an action of trespassse lyeth. And so I finde in the Regist. fo. 107, *De petris pro metis positis abstractis.*

Hedge-Breakers.

IF there be any common breakers of hedges within the Leer, who teare up friches and fences, and leave their neighbours ground subject to incursions of Cattell, and are a meanes that many trifling actions of trespassse are set on foot, to the disquiet of his Majesties Subjects.

Pound-

Pound-Breach.

IF any breake any common pound or pinfeld, which is *Custodia legis*, to take any distresse out of the same, though the distresse be tortious and without cause, yet the poundbreach is unlawful, for that the cattell were in the custodie of the Law, and the owner might have a Replevin.

If any shall rescue, and by force take away any cattell or other thing which is distreyned for any rent, amerciament, or other cause before it be impounded, or in any other safe custodie, it is presentable.

Rescous.

IF any commit any Rescous within the libertie upon the Sheriffe or his Bailiffes, or any the Kings officers, in disturbance of them, from taking and detaining any person arrested.

Bloodshed.

IF any person commit any assault whereby bloodshed doth ensue, or doth make any affray or outrage whereby any mutinie or disturbance doth arise amongst the Kings leige people, it is popular and presentable, 1 R. 3, fo. 1. Bro. Presentm. 7 Leet 26.

Generall Grievances.

THe subsequence offences will deserve that marke or character, in regard they are generally pernicious to the Common-wealth by their fruites and example, and are punishable by the common Law, Or because they are generally prohibited by Statute Lawes for the good of the publike weale : And in the first rancke are the evill members of a State and Realme, of which regiment the common Barretor may well be the ringleader.

Common Barretors.

IF there be any common Barretors within the Libertie, they are of both sexes, Scoulds, Brawlers, common malefactors, disturbers and disquieters of their neighbours.

A common Barretor is well discribed. *Co. li. 8. fo. 37.* to be a common mover and stirrer up or maintainer of suites, quarrells or parties either in court or countrie.

1 In Courts of Record, or in the Countie, Hundred, and other inferiour Courts.

2 In the Countrey three manner of wayes,
1 In disturbance of the peace, 2 In taking or deteyning of possessions of houses, lands or goods, (which are in question) not only by force, but also by subtiltie, 3 By false invention and dispersing of calumniationes, rumors and reportes, where,

whereby discord and disquiet doe arise amongst his neighbours.

This person is the common incendiarie of strife in his neighbourhood, and is ever fishing in troubled waters. Hee is alwayes like a Woollfe worrying his harmelesse neighbours with multiplicity of unjust and fained suits, either by information upon penall Statutes, or by personall actions, for himselfe and others, or by malicious procuring of Latitats or Supplicavits of the peace, and all by fraud and malice, to inforce the poore partie to give him money, or some other composition *ad redimendam vexationem*.

Evildropper.

THE Evildropper who is a *species* of a Barretor, doth succeed in his order, one that lurks under walls or windowes, by night or day, to heare and carry tales, and raise strife twixt neighbours, a most peillous member in a peaceable common wealth: the holy Ghost in the new Testament, calls such an one *Diabolus*, a false accuser, calumniator, or make-bate, 2 *Tim.* 3. 3 *Salomon*, *Prov.* ca. 26. v. 20. cryes out against them in this wise, *Where no wood is, there the fire goeth out, where there is no talebearer, there strife ceaseth, vers. 21. The words of a talebearer are as wounds, and they goe downe into the innermost parts of the bellie, Levit. 19. ver. 16. Thou shalt not goe up and downe as a talebearer among the people.*

The litterall interpretation of a Talebearer

Antiquity, Authority,

or accuser is one that maketh marchandise as it were of words, uttering them as wares, going from place to place to heare and spread abroad criminations of other men.

Such creatures are compared to a kinde of fowle and infectious vermin, called Weasels, who conceive by the eares, and bring forth their little ones by the throat, a thing abominable in mento receive by the hearing any false and feyned deprivations, and to utter and exaggerate the same by their tongue and report, and certainly a patulous and forward eare, doth incourage and intise a busie tongue, and both the detractor and the hearer. *Diabolum habent, alter in aure, alter in lingua.*

Lewd houses.

THose who keepe and maintaine in their houses lewdnesse, and lewd strumpets, whose persons are justly branded for Bawdes and Panders, and their habitation for Stewes and Brothell houses, which minister frequent occasion of murders, and bloodsheds, and often infringement of the peace, to the utter ruine and destruction of families, a most odious and audacious sinne which poysoneth and corrupteth the publike weale, this lewd and too accustomed vice is punished in the spirituall Court, *pro salute animæ*, but here inquirable, *pro salute reipublicæ*, 27. Hen. 8. fo. 17.

Rogues

ALL Rogues, Vagabonds, and sturdie persons that wander up and downe are here inquirable by the common law; For suppressing such kinde of people, diverse lawes were made which were all repealed by the Statute of 39. *Eliz. ca. 4.* and thereby a description made, who should bee accompted Rogues, Vagabonds and sturdie beggars, That is to say,

1 All persons calling themselves Schollars, going about begging.

2 All Seafaring men pretending losse of ships or goods.

3 All idle persons going about begging, or using any subtile craft or unlawfull games.

4 Or faining knowledge in Physionomie, Palmestry, or other like craftie science.

5 All tellers of destinies, fortunes, or other like fantasticall imaginations.

6 All Proctors, Procurers, Patten-gatherers, or collectors for Gaoles, Prisons, or Hospitals.

7 All Fencers, Bearewards, common Players of interludes and minstrells, wandring abroad (other than such as belong to honourable personages, lycensed under their hands and seales of armes.)

By the Statute of 1 *Jac. 7.* which did continue and enlarge the said Statute of 39 *Eliz.* all licences of honourable personages are taken away

And

And all glassemen wandring up and downe the countrey are numbred in the ranck of rogues, By this Statute every man is bound to apprehend such a rogue as he or they shall see or know to resort to their houses to aske or receive any almes, and to carrie, or cause him to bee carried to the next Constable or Tethingman, upon pain for every time, 10 shillings, to be levied and imployed according to the provision of 39. *Eliz.* in manner following, *viz.*

For the reparations and maintenance of the houses of correction, and stocke and store thereof, Or reliefe of the poore where the offence is committed, at the discretion of the Justices of peace of the limit, citie, or towne corporate, and to be levied by warrant under the hands and seales of two or more of the said Iustices, by distresse and sale of the offenders goods and chattels.

And in default of any such levie, then to be levied and imployed by the Lord of the Leer or his Officer, in such manner, as is prescribed by the Statute of 39. *Eliz.*

By the same Statute of 1 *Iac.* If such Constables or Tethingmen, do not cause the said rogues, vagabonds, and sturdie beggars, to be punished according to the Statute of 39. *Eliz.* That then they shall forfeit 20 shillings for every default to be levied, and imployed in manner as in the Statute 39. *Eliz.* is set forth.

This Statute of 1 *Iacob.* is continued by 21. *Iacob.* and 3. *Car.* and doth not any way abridge the
the

the former power of the Court Leet, in inquiring, presenting, and amercing, but rather gives an amplification to it, and a speciall direction (who are to be accounted rogues) which before those Statutes were not so exactly known and deciphered.

This Law in point of preventing justice, is the most usefull of all other ordinarie Lawes, for experience will reach every one, that the opportunities of their lawlesse and wandering liberties, (were not such provisions of restraint made) would minister occasions of robberies, burglaries, assassinations, murders, and other grievous offences.

Message of Theeves.

IF any be employed, and doe goe in the message of theeves, and are as bad, and worse than rogues, are here inquirable.

Masterlesse persons.

ANd so are those, who like Antipodes, walk in the night, and sleepe in the day, men that live without meanes, or master, fare well, and have nothing, who are not able to render an account of their life.

Haun-

Haunters of Alehouses.

Amongst vagabonds, or hazarders and night walkers, M. *Fitzh.* and M. *Kitchin*, have joyned common haunters of Tavernes, or Alehouses, and since they wrote, diverse good laws have beene made, aswell against such haunters, as against drunkards, and their harbourers, and receivers.

The first Statute being 1. *Jaco.* 9. intituled, an *Act to restraine the inordinate haunting and tipling in Innes, Alehouses, and other victualing houses*, doth set forth the ancient true and principal use of such houses, to be for receipt and releif of wayfaring persons, and for supply of the wants of poore people, and not meant for the harbouring of lewd and idle persons to spend and consume their money and time in drunken manner.

By which Statute it was restrained that no Alehouse-keeper, &c. should permit any inhabitant or townes man (other than labourers and handicrafts-men, or persons invited by any traveller) to continue drinking or tipling in any such house, upon paine to forfeit for every such offence to the use of the poore of the parish ten shillings.

Drunkards.

4 *Jac.* 5.

And afterwards by a Statute of 4. *Jac.* 5. and intituled, *An Act to repress the loathsome and*

and odious sinne of Drunkenesse, which thereby is rightly described to be the roote and foundation of many other enormous sinnes, as bloodshed, stabbing, murder, swearing, fornication, adultery, and such like, to the great dishonour of God, and of our nation, the overthrow of many good arts and manuell trades, the disabling of diverse workemen, and the generall impoverishing of many good subjects, abusively wasting the good creatures of God, It was provided, that every person which should be drunke, and thereof lawfully convicted, should within one weeke after conviction pay 5. shillings to the use of the poore of the parish, And upon refusal or neglect or non abilitie to pay it, to bee committed to the stockes, there to remaine sixe houres, and if any person should continue drinking and tipling in any Inne, &c. in the place where he inhabiteth, being duly proved in such manner as is limited in the act of 1 *Iaco*. He shall forfeit 3. shillings 4. pence, to be levied as the penaltrie of drunkenesse, and for non-payment to bee committed to the stockes, by the space of foure houres.

That all Constables, Churchwardens, Headboroughs, Tethingmen, Aleconners, and Side-men, shall in their oathes incident to their severall offices, bee charged to present the offences contrary to this Statute.

This Statute appoints a forfeiture of ten shillings upon the Constable or other inferior officer, who shall neglect the correction

Antiquity, Authority,

of a drunkard, or levying the penaltie upon him, and further gives power to the Court Leer, to inquire of, and punish all the offences in these two acts, so as the presentment be within six moneths after the offence.

31 Jac. 68. 7.

These two Acts by a latter of 21 Jaco. ca. 7. with the alterations and additions therein expressed, are to be put in due execution, and to continue for ever.

And whereas proofe of two witnesses was required by the said statutes, now the proofe of one should be sufficient.

That the voluntarie confession of any offender against either of the said Statutes (before any person, authorized by the said act to minister an oath) shall suffice to convince the partie so offending, and afterwards the oath of the party so offending and confessing shall be taken and be a sufficient proofe against any other, offending at the same time.

That if any stranger should bee found upon view of his owne confession, or proofe of one witness to be tipling in any Inne &c. hee shall incur the like penaltie, as if he were an inhabitant, to be levied and disposed, as in the said act of 4 Jac. is expressed.

That the oath limited by the said Statute of 4. Jac. to be ministred to Constables, &c. for presenting of offences contrary to the Statute, shall be alwayes hereafter enlarged and extend to present all offences, done contrary to all these three severall Statutes, according to the severall al-

alterations and additions in the same.

1 Car. R. ca. 4.

By the Statute of 1 Car. Regis cap. 4. intituled,
*An Act for the further restraint of tippling in Inns,
Alehouses, and other Victualling houses.* It is pro-
vided that every Alehouse keeper, &c. which
shall permit any persons not there inhabiting to
tipple in his house, shall incur the same penal-
tie, and in such manner to be proved, levied, and
disposed, as by the Law of 1 Lac. is appointed
for suffering townsmen, and inhabitants to tip-
ple in their houses.

And keepers of Tavernes, and such as sell
wine in their houses, and doe keepe Innes or vi-
qualling, shall be taken to bee within the said
two former Statutes of 1. and 4. Lac. and also
within this Statute of 1 Car. ca. 4.

4 Lac. 5.

A drunkard convicted the second time, is to
be bound with two sureties, to the good behavi-
our from thence forth. Every Alehousekeeper
which shall be convicted for any offence, against
any the branches of either of the two former
lawes, and the meaning of this Statute, shall for
the space of three years after his conviction, be
utterly disabled to keepe any such Alehouse.

21. Ja. 7.

There is no Law or Ordinance so exactly
made by the wisdom of a State; but the ene-
mie of mankind, and his ministers and mem-
bers, would invent some device and machinati-
on to elude it. As, to that good law against that
odious sinne of drunkenness; there is a great
disputation growne (as if there were need of a
new act to interpret it) who shall be accounted a

Who shall bee
a drunkard.

drunkard. In the opinion of some famous in that facultie, none shall be deemed a drunkard, unlesse he be so bereaven of his memorie, reason, sense, and vnderstanding, that he is not able to know the difference betweene his head and feet,

Et pedis & capitis quæ sint discrimina nescit.

But such sophistical *Symposiarchistes* must look backe upon that of *Isaiah*, *Va qui consurgitis mane ad ebrietatem sectandam, & potandum usque ad vesperam ut vino astueris*, that wine may inflame them.

All excesse of drinking, *ultra necessitatem*, which doth inflame and begets a distemper, and disorder, in the ordinary disposition of nature, is to be accounted Drunkenesse. He that is *stre-nuus in vino*, and can carry his burden like a brewers Horse, is not more excusable than the weak infirme drunkard.

All the severall sorts and kindes of drunkenesse, may bee reduced under two regiments.

1 The one sort which drink *ad insaniam*, till they be so mad, as that they will fight with a wall, or with their owne shadow in the Moone light.

2 The other sort which drinke *ad delirium*, till they fall into a sottish and swinish drowfinesse, The *Psalmist* 107. *vers.* 27. describes them by a comparison of ships on the Sea, *They teele to and fro, and stagger like a drunken man, and are at their wits end.*

I neede not speake more of them, There are many Sermons and Tracts extant in print against them, and yet a man may commonly with grief
be.

hold severall sorts of them reeling, and in conflict with the stones of the streets, in the face of the Sunne, and passe with impunitie.

There follow three mischievous members, who are publike enemies to the peace and plenty of a Realm, one preyes upon the coine; the other two, upon the corne and victuall of a Common weale.

Usurie.

USurers were here inquirable, as offenders against the common Law, It appeares by *Glanvill, li. 7. ca. 16.* that their goods and all their chartels, which they had at the time of their death, wereto be seized to the Kings use, and their heires to be disinherited, and their lands to returne to the Lord of the fee, and the reason why he was not to be convicted in his life time, because it was presumed that hee might repent and forsake the sione before his death, which if he did, he was then freed from the mulct of the Law, and so it is rendred in the sametract,

Sciendum tamen, quod si quis aliquo tempore usurarius fuerit in vita sua, & super hoc in patria publicè defamatus, Si tamen a delicto suo ante mortem suam destiterit & penitentiam egerit, post mortem ipsius, ille, vel res sua lege usurarii minime censentur.

And

And li. 10. ca. 3. He defynes what a Vſurer is, one that taketh more than his owne, *Si quis aliquid crediderit, ſi plus eo receperit, uſuram facit.*

Lamb. Arch.
fo. 23.

This Law had its propagation from the confirmation of the *Mosaicall* law by king *Alfred*. *Exod. 22. verſ. 25. Si pecuniam mutuam dederis populo meo pauperi qui habitat tecum, non urgebis eum quaſi exactor, nec uſuris opprimes.*

It ſeemes by the Statute *de Iudaismo*, made *An Dom. 1289. & 16, Ed. 1.* That the diſperſed Iewes (who then much infeſted this Kingdom) were the firſt introductors of this ſinne, and the only uſurers of this Kingdome, whereby his Maieſties leige people received much miſchiefe and diſinheriſon, and many offences aroſe, and therefore for the honour of God, and common profit of his people, it was ordained, That no Iew ſhould from thenceforth take any thing to uſurie of any Chriſtian, upon any Lands, Rents or other things, and if any Iew did offend againſt that ordinance, he ſhould loſe his loane, be puniſhed at the Kings pleaſure, and the Chriſtian ſhould recover his gage, *viz.* his lands, rents, or other things.

This Iewiſh leproſie had ſo ſpread it ſelfe in this Kingdome, that it grew even exceſſive amongſt Chriſtians, for redreſſe whereof, it was provided 3. *Hen. 7. 6.* That all unlawfull cheviſance and uſurie ſhould be extirpate, and Brokers of ſuch bargaines, ſhould be ſet on the pillory, be halfe a yeare imprifoned, and pay twenty pound.

That

That Statute and an other of 11 H. 7. 8. were repealed by 37. Hen. 8. ca. 9. And provision made, that no person by any covin, engin or other deceitfull way should take (above ten pounds in the hundred) interest for one whole yeare, upon paine to forfeit the treble value of the wares, marchandizes, and other things so bargained &c. imprisonment of bodie and fyne and ranfome at the Kings pleasure.

This Statute being repealed 5. Ed. 6. 20. was fully revived 13. Eliz. ca. 8. And further enacted, that all bonds, contracts, and assurances, collaterall, or other to be made for payment of any thing reserved above the rate of 10. pound in the hundred, should be utterly void, and all Brokers, sollicitors, and drivers of usurious bargaines, above that rate, to be judged, punished, and used as Counsellors, Attourneys, or Advocates in any case of *Præmunire*. And for that all usurie being forbidden by the Law of God, is sinne and detestable,

It was further enacted, That in all usurie, loan, and forbearing of mony at 10 pound in the hundred and under, the offender should forfeit so much as shall be reserved over and above the principall, to be recovered and imployed as is limited for forfeitures by the Statute of 37. H. 8. And not to be punished by the Ecclesiasticall law or otherwise.

This law was made perpetuall by the Statute of 39. Eliz. 18.

Antiquity, Authority,

The Statute of 21 Jac. cap. 17. which by 3. Car. cap. 4. is made perpetuall, doth reſtraine the taking of any more, than after the rate of 8. in the hundred, for one whole yeare, under paine of forfeiture of the treble value of the monies, wares, &c. and all bonds, contracts, and aſſurances to be void.

The Scriveners, Brokers, Drivers, and Sollicitors, to forfeit 20 pound, and imprisonment for halfe a yeare, if they take above 5. ſhillings for the procuring or driving the loane, or forbearing the ſame lent after the rate of an hundred pound for one yeare, or above 12. pence for making or renewing the bond.

Theſe two laſt mentioned Statutes doe reſpectively ſtand and remaine in their proper and peculiar force, according to their ſeverall reſtrictions and limitations, yet none of them doe abrogate the inquirie of it as an offence of the common Law, in the Sheriſſes Tourne or Court Leet, but the Steward can nor inquire nor inflict the forfeitures, limited by the Statutes, becauſe thereby no power is given unto him.

Foreſtallers.

IF any buy, or cauſe to be bought any marchandize, victuall or other thing, comming by land or water towards any faire or market, to be ſold in the ſame, or toward any Citie, Port, Haven, Creeke, or rode of this Realme or *Wales* from

from any part beyond the Sea to bee sold.

Or shall make any bargaine, contract or promise for the having or buying of the same, or any part thereof, before it shall bee in the market, faire, citie, port, &c. ready to be sold.

Or shall make any motion by word, letter, message, or otherwise, to any person for inhaunting the price, or dearer selling of any of the said things.

Or else diswade, move, or stirre any person comming to the market, or faire, to forbear the bringing of any of the things to any faire, market, citie, &c. to be sold, shall bee judged a Fore-staller.

Regrator.

IF any shall Regrate or get into his possession, in any faire or market, any Corne, Wine, Fish, Butter, Cheefe, Candles, Tallow, Sheep, Lambes, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead victuals whatsoever, that shall be brought thither to be sold, and doth sel the same againe, in any faire or market holden in the same place, or in any other faire or market within foure miles thereof, shall be reputed a Regrator.

Ingrosser.

IF any get into his hands by buying, contracting, or promise taking (other than by demise

mise, grant, or lease of Land, or tythe) any corn growing in the fields, or any other corne, butter, cheese, fish, or other dead victuall within England, to the intent to sell the same againe, shall be taken an unlawfull Ingrosser.

They are all linked together in this Statute, and the punishment of them equal, *viz.*

1. Offence, imprisonment for two moneths without balle, and forfeiture of the value of the goods bought, &c.
2. Imprisonment for one halfe yeare, and lose the double value of the goods, &c.
3. Offence, pillorie in the place where hee dwells, forfeiture of all his goods and cattell, which he hath to his own use, and imprisonment during the kings pleasure.

By this Statute, no expresse power is given to Leets to inquire of these offences, or any of them, whereupon much doubt hath arisen, and much neglect ensued, in not charging the suitors to present the offenders, and forestallers, and Regrators at Tournes and Leets, the rather for that *M. Kitchen* in his booke of that subject, and in the particulars of the charge, doth not once mention those offences, but that they were and are offences at the common Law, and inquirable and punishable in Tournes and Leets will be very manifest.

2^o 1^o Leet, fo.

Fitzh. in his Court Leet, fo 86. printed A.D. 1559. after the Statute of 5 *Ed. 6.* doth charge the inquirie of Forestallers and Regrators.

And

And the Statute 5. Ed. 6. doth not abridge any other power or jurisdiction, as appeares by a clause in the same Act, viz. If any should bee punished by vertue of that Act, for any thing therein mentioned, he should not otherwise be vexed or put to any paine for that thing. It will not be amisse here, to take a short survey of the ancient ordinances of this Kingdome, which were but declarations of the common Law.

The old Law, intituled, *Iudicium Collisfrigii*, 51 Hen. 3. provides that inquirie be made *de forstallariis*, who before the due houre did buy any thing, contrary to the ordinance of the towne and marker. Or doe go out of the town to meet with any vendible things, and doe buy them *extra villam*, that they might sell them in the towne to Regrators, at a dearer rate, than they which would have brought it into the Towne.

That law is seconded with another, intituled *Statut. de pistoribus & braciolaribus &c. & de Forstallariis* (being repealed only touching the assise of wine by 21 Jac.) by which the King commands, that no forestaller should dwell in any towne, and renders the reason. *Qui pauperum est depressor manifeste, & totius Communitatis & patrie publicus inimicus*, An oppressor of the poore, and an enemy of the countrey, and hereby the

- 1 Conviction is a grievous americiament.
- 2 Iudgement of the Pillorie.
- 3 Incarceration and redemption.

Antiquity, Authority,

4 Abjuration of the Towne.

And the like against those that should counsell or countenance them, and it was to be inquired, if any Steward or Bayliffe, did for any reward remit the judgement of the pillorie, by which it is plaine, that Stewards of Leets had power to inquire of this offence.

By the Statute of 25 *Ed. 3, cap. 3*, all forestallers of Wines, and all other victualls, wares, and marchandizes, that comes to the townes of *England* by land or by water, being attainted at the Kings suit by indictment, or in any other manner, shall forfeit to the King the things forestalled, if they were full bought, But if agreement were only made by earnest, then the value of the things so forestalled, and two yeares imprisonment or more, at the Kings will, if the buyer had not whereof to pay it.

By all those lawes it was not perfectly known what person should bee taken for a forestaller, &c. and therefore a full declaration was made by the latter Statute of 5 *Ed. 6. 14.*

These Monopolists of late yeares, began to swarme and muster themselves against the Common weale, and in time like the frogs of *Egypt*, would have over-run and covered the whole land, and without a scarcitie would have brought a dearth amongst us, if his now Royall Majestie by his Proclamation, orders and directions, Dated 28. *December, 1630.* afterwards put in execution against some principall

pall ingrossers of corne and graine by two severall censures and decrees, in the high court of Starchamber, *Mich. 7. Car.* had not ministered a timely prevention, by which directions a strict inquirie of Forrestalles and Regrators is required in a Court Leet.

There follow severall sorts of fraudes, deceits, and conspiracies, as well in making, selling, and uttering of victuall and wares, which concerne the alimony and sustenance of the body, as also in trades of mercimony, and manufacture, and in artificers and labourers, all which are inquirable at Leets.

Afsize of Bread.

BRead is the principall of all kinde of victuall, it is the *staffe of life*, and the life of the poor, in *sacred Scripture* the commination of famine, is denounced by breaking the *staffe of bread*, *Levit. 26. 26.* If therefore any Baker shall make and put to sale any bread which is not of good and sufficient weight and assize, according to the rate and prices of corne and grain, in the markers adjoining, or is not wholesome for the bodie of man.

Brew-

Brewers and Tiplers.

IF Brewers and Tiplers doe not keepe and observe the affize of ale and beere, and make it good and wholesome for the body of man, or do drefuse to suffer their Ale and Beer to be assayed an tasted by the officer, on that behalf appointed, before they set the same to sale To the end he may be the better directed where to search, Every licensed Tipler ought to have a Bush or alestake at his doore.

Cups, Glasses.

IF any Tiplers sell by glasses, cups, or dishes, or any measure which are not of due affize, and lawfully sealed, whereby the poore labourer and wayfaring passenger, (for whose reliefe and comfort such persons are allowed to tipple) bee scanted and defrauded.

By the ancient Law of *Indicium Collist. 51.*
Hen. 3. before mentioned, If a Baker or Brewer be convict for not observing the affize of bread and ale, the first second and third time, he shall bee amerced according to his offence, if it bee not overgrievous, but if it be grievous and often, *Si grave fecerit delictum & pluries, & castigari noluerit, tunc patiatu judicium corporis (scil.) Pistor collistrigium, & brassatrix trubicetum*
vel

and Uses of Leets.

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vel castigatorium, A Baker to the Pillorie, and a brewer to the Tumbrell, or other correction, &c.

Butchers, &c.

IF any Butchers, Fishmongers, Regrators, ^{13 Edw. 3. 6.} Hostlers, Brewers, Bakers, Pulvers, or any other sellers of any manner of victuall, doe not sell the same for reasonable prices, having regard to the prices in the places adjoyning, so that the same sellers have moderate gaines and not excessive, reasonably to be required (according to the distance of the place from whence the said victualls be carried) shall pay double for the same to the partie damnified, or in default of him, to any other that will pursue on this behalfe. ^{13 Ed. 3. 6.}

Victuallers.

BY the Statute of ^{13 Ric. 2. 18.} For victuallers, ^{13 Ric. 2. 18.} it was accorded, that they should have reasonable gaines, according to the discretion and limitation of the Iustices and no more, upon paine to be grievously punished, according to the discretion of the said Iustices, where no paine was limited in certaine before that time; and that Sheriffes, Stewards of franchises, and all others that have assize of bread and ale, and the correction thereof, shall take no amercement or fine for

for any default, touching the assize, to spare any bodily punishment.

In the time of *Edw. 4.* certain persons for their owne profit, did procure Letters Patents of the King to be surveyors and correctors of victuals, within certaine Cities, Boroughs, and other places, and by pretence thereof did commit diverse extortions and oppressions, to the damage of the people, and derogation of liberties and franchises, which Letters Patents by the Statutes of 12 *Edw. 4. ca. 8.* were made void.

But for that the dearth and plentie of Cheese, Butter, Capons, Hens, Chicken, and other victualls, necessarie for mens sustenance, were many times inhaunfed and raised by the covetousnesse of the owners, by occasion of ingrossing and regrating the same, It was 25 *H. 8. cap. 2.* provided, that upon complaint of any such inhaunfing, the Lord chancellor of *England*, and others therein named, should have power to set and taxe reasonable prices upon such kind of victualls, to be sold in grosse or by retaile, and Proclamation to bee thereof made under the great Seale, and those prices so taxed to be observed upon such paines as by the said Proclamation should be declared.

But this Act should not be hurtfull to Maiors, Sheriffes, Bailiffes, or other officers of Cities, Boroughs, or Townes-corporate, nor to any other having authoritie to set prices, &c.

Nota, the power of a Leet is not abridged by any of these Statutes, but rather declared and explained.

Hors.

Horsebread, &c.

IF any Baker in any Citie, Towne corporate, or Market towne, shall make or sell any Horsebread, which is not of lawfull assize, and reasonable weight, after the price of Corne and Graine in the market adjoyning. 21 Jac. 28

Or if any Hostler or Inholder, dwelling in any Citie, &c. shall make horsebread in his hostlerie or without.

Or shall not sell their horsebread, and their hay, oates, beanes, pease, provender, and all kinde of victuall, both for man and beast, for reasonable gaine, having respect to the prices in the markets adjoyning, without taking any thing for litter.

Or if any Inholders or Hostlers, dwelling in any throughfare, towne, or village, (being no citie, towne corporate, or market-towne, where any common Baker having beene an apprentice at that trade by the space of seven years is dwelling) who may by this Statute make horsebread in his house, shall not make it sufficient, lawfull, and of due assize, according to the said prices of graine and corne, Or shall offend in any thing contrary to this act.

All stewards of Leets have power to enquire, heare, and determine all the said defaults and offences of the said Hostlers and Inholders. And the punishment to be inflicted, is for the

Antiquity, Authority,

- 1 Offence to be fined according to the quantitie of the offence.
- 2 Conviction, imprisonment for one moneth without baile, &c.
- 3 To stand in the pillorie without redemption of money.
- 4 After judgement of the pillorie given, hee shall be forejudged from keeping any lane againe.

Unwholesome or corrupt Victuall.

IF any Butchers, Fishers, or other Victuallers, do sell any manner of corrupt victuall, not wholesome for the body of man.

If any butcher shall sell *carnes sustentatas vel de morte morina*, any contagious flesh, or that dyed of the murrain, 51 *Hen.* 3. Or shall kill and sell the flesh of any Bull unbaited, or of any cattel killed suddainly upon the drift, or with their breath doe puffe and blow up meat, whereby it prooves deceitfull in the sale, and may bee unwholesome, it is presentable.

Flawing of Hides, &c.

1 *Iac.* ca. 22.

NO Butcher by himself or by any other person, shall gash, slaughter, or cut any hide, of any Oxe, Bull, Steere, or Cow, in slaying thereof or otherwise, whereby the same bee impaired or hurt, under paine of 20 pence for every hide so gashed, &c. 1 *Iac.* c. 22.

No

No Butcher shall water any hide (except only in the moneths of Iune, Iuly, and August) nor shall offer or put to sale any putrified or rotten hide, upon paine of every hide so watered, putrified and offered to be put to sale, three shillings foure pence.

Calves under five weekes old.

NO Butcher or other person or persons shall kill any Calfe to sell being under five weeks old, upon paine for every Calfe so to be killed and sold, six shillings foure pence.

No Butcher shall by himselfe or any other person use the craft or myserie of a Tanner, during the time that he shall use the craft of a butcher, upon paine for every day six shillings eight pence.

Cookes.

INquirie is to be made of Cookes that seeth flesh or fish, with bread or water, or any otherwise, that is not wholesome for mans bodie, or after that they have kept it so long, that it loseth its naturall goodnesse (*debitam naturam*) and then reseeth it and sell it, 51 Hen. 3.

Malt-maker.

THe Maltmaker (the only Syre of an unruly Alehouse, by his excesse in making of too much,

Continued 1
Jac. 25, Con-
 tinued 21 *Jas.*
 28, Continu-
 3 *Car.* 4.

much, and his slights and deceits in his hasty making of bad and corrupt malt, is, as ill a member as any, his frauds and slights are in the preamble of this Statute described to be such in the making and drying of his malt, that no wholesome drinke for mans bodie could bee thereof made, to the perill and danger of his Majesties subjects, the losse and decay of the Common wealth, and the utter impoverishment of Brewers, for that they could not make so much of fifty quarters of malt, being evill dried and made, as they could of forty good.

If therefore any person shall make any barley malt (the moneths of June, July, and August only excepted) but that it shall have in the Fat and Floore, steeping and sufficient drying thereof three weeks at the least, and in those moneths 17 dayes at the least (without which it cannot bee wholesome for mans body) shall forfeit for every quarter of Barley malt, two shillings.

Or if any shall mingle any malt not being well and sufficiently made, or being made of mow-burnt or spired barley with other good malt, and put the same to sale, shall forfeit for every quarter, two shillings.

If any person shall put to sale, any malt not sufficiently and well trodden, rubbed and fanned whereby there may bee conveniently fanned out of one quarter thereof, halfe a peck of dust or more, every such person shall forfeit and lose for every quarter so put to sale twentie pence.

One moitie of those forfeitures, are to accrew to the King, and the other to the partie that will sue for the same, to be sued or presented within one yeare.

Of these abuses every Steward of Leets hath power to heare, and determine, aswell by presentment of twelve men, as by accusation or information of two honest witnesses, and the Bailiffes and Constables of every borough, markettowne, or other rowne, where such malt shal be made or putto sale within any of the said townes, and finding the same, with the advice of one Iustice of peace, shall cause the same to be sold at reasonable prices, and under the price of the market, as to his discretion shall seeme expedient.

Millers.

IF any Miller take excessive tole, he ought to take but the twentieth or twenty fourth grain according to the custome of the place, and to the strength of the water, or if hee changeth or altereth the graine which he hath to grinde, presentable.

Conspiracies in Butchers.

IF any Butchers, Brewers, Bakers, Poulters, ^{2,3} Ed. 6. 31^r Cookes, Costermongers, or Fruiterers, not contented with moderate and reasonable gaine, shall

shall conspire, covenant, promise, or make any oathes to sell their victuals but at certain prices.

Or if any artificers, workmen, or labourers, do conspire, covenant, &c. not to make or doe their workes but at a certaine price and rate, or shall not enterprise or take upon them to finish, what another hath begun, or shall doe but certaine worke in a day, or shall not worke but at certaine houres and times.

Every person so offending being lawfully convicted thereof, by witnesse, confession, or otherwise, shall forfeit as followeth.

- 1 Offence, ten pound to the King (if he have to pay) within six dayes after his conviction, or twenty dayes imprisonment, with bread and water for his sustenance.
- 2 Twenty pound to the King (if he have to pay) within six dayes, or else the punishment of the Pillorie.
- 3 Forty pound &c. payable within six dayes, or else to sit in the Pillorie, lose one of his eares, and at all times after to bee taken for a man infamous, and his oath not to be credited in any matters of judgement.

And if such conspiracie &c. be had and made by any societie, brotherhood, or company of the victuallers above mentioned, with the presence or consent of the more part of them, that then immediately upon such act of Conspiracie, covenant or promise, over and besides the particular punishment, before appointed for the offender,

der, their corporation shall be dissolved to all intents, constructions, and purposes.

False weights and measures.

IF any keepe and use any false measures of bushels, gallons, ells, yards, or false weights, ballances and pounds.

Double weights. &c.

OR if any use double weights and measures, the greater to buy with, and the lesser to sell with, to deceive the people, in *Mag. Car. c. 26.* one speciall branch for the uniformitie of weight and measure, is in these words, *S. Vna sit mensura vini per totum Regnum nostrum, una mensura cervisie, una mensura bladi, et de ponderibus sicut de mensuris.* Also by the foresaid Statute of 51 Hen. 1. It was to be inquired, if any sold by one measure, and bought by another, or if any did use false ells, weights, or measures, which was confirmed and enlarged by 17. Ed. 3. 10.

It is Gods law injoynd by *Moses* unto the people, *You shall doe no unrighteousnesse in judgement in mete yard, in weight or measure, just ballances, just weights, a just ephah, and a just hinne shall yee have Levit. 19. vers. 35. 36.*

Wynes.

Wines.

7 Ed. 6. c. 3.

THe Statute of 7 Ed. 6. ca. 3. intituled an *Act made to avoid the great and excessive prices of wines*, for so much as doth concerne the prices of wines, or the restraining of having wines in mens houses is repealed 1 Jac. 2. 5.

But no person shall keepe any Taverne, or sell or utter by retaile, by the gallon, or lesse, or greater measure in any place, any *Gascony, Guyon* or *French*, nor any *Rochel* wines, nor any other wine or wines, in any place, except it be in cities, townes corporate, Boroughs, Port townes, or Market townes, or in the townes of *Gravesend, Sittingborne, Tuxford* and *Bagshot*, upon paine to forfeit for every day so offending ten pound.

No person shall sell wines by retaile in any Citie, borough &c. unlesse he be assigned by the head officers, and the most part of the common Counsell, Aldermen, &c. for the time being of such City, &c. by writing under the common seale.

Nor in any Citie or towne &c. not corporate, or in the townes of *Gravesend, Sittingborn* or *Bagshot*, unlesse he be appointed by all or most part of the Iustices of peace of that Shire, at the generall Sessions of the peace, by writing under their severall seales, and ^{at} paine for every day five pound.

And if any having authoritie, &c. shall nomi-

mi-

minate and appoint, more or greater number of Taverners, or Wine-sellers, than by the Statute is limited to be assigned in severall places, shall forfeit for every such nomination or appointment five pound.

And none shall sell or retaile any kinde of wines to be drank or spent in his mansion house or other place in his tenure or occupation, by any colour, craft, engine or meane, upon paine to forfeit for every such offence ten pound.

The Steward in every Leet and the Sheriffe in his Tourne (*inter alia*) have power to enquire by the oathes of twelve lawfull men, of all offences done contrary to this Act, and every inquirie and presentment so taken, shall be of such force, as if it were had or taken in the Kings bench, and the foresaid penalties upon any such presentment (and no bill, plaint, action or information thereof commenced in any the Courts of Record) shall bee divided equally into two parts, whereof one to bee to the King, and the other to the poore of the towne or place, &c.

To bee sued, presented &c. within one yeare.

Deceits in Tradesmen.

IF any Tradesman or Artificer whatsoever, doth use any fraud, shift, flight, or deceit in the making of his and their ware and chaffer,

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and

Antiquity, Authority,

and doe not make the same as they ought whereby the people are deceived.

Learned *Lynwood, titul. de hæreticis cæfinaliter*, sets forth seven sorts of Mechanick arts or trades, and in the first sort he rankes all those *qui circa pilos et lanam, pelles et carnes operantur*, those that meddle with haire or wooll, hide or flesh, amongst whom are butchers, Tanners, Curriers, Shoemakers, or Cordwayners and others cutting of Leather, all comprized in the Statute of 1 Jac. ca. 22. the butchers I have singled out already in their due place.

Clothmakers and Labourers
thereof.

IN the occupations of Clothmaking the labourers thereof were driven to take a great part of their wages in pinnes, girdles, and other unprofitable wares, and had delivered unto them wools to be wrought by very excessive weight whereby both men and women were discouraged of such labour. It was therefore ordained,

That all clothmakers should pay to the carders, spinsters, and all other labourers in any part of that trade lawfull mony for all their lawfull wages.

And should also deliver wools to be wrought according to the faithfull deliverie, and due weight thereof, upon paine to forfeit to every labourer,

Repealed 5 E-
1724.

The

The treble value of the wages so not paid.
And for every default in deliverie of excessive
and unlawfull weight six pence.

That every carder, spinster, weaver, fuller,
shereman and dyer shall duely performe his du-
tie in his occupation, upon paine of yeelding to
to the partie greeved double dammages.

That every fuller in his craft of fulling, tassell-
ling, or rowing of cloth, shall exercise and use
tazels and no cards deceitfully impairing the
same cloth, upon pain to yeeld to the partie grie-
ved double dammages.

Every Steward of Wapentakes and Leets (out
of any citie, borough or towne, where no
Mayor or chiefe officer is) shall have power
to heare and determine the complaints of
every clothmaker and labourer, by due exa-
mination of the parties, and for non-payment
of the said duties forfeiture and dammages, to
commit the offenders to the next Gaole, there
to remaine untill they pay the same.

And shall also have power upon infor ma-
tion of any other person which is not grie-
ved, to cause the partie to come before him,
for offending this ordinance, and if upon exa-
mination or other due prooffe the partie be
found guiltie or defective, he shall forfeit for
every time to the King or Lord of the Leet
three shillings foure pence to bee recovered
in manner aforesaid, without paying any fee
or reward.

**Tanners. Who may bee a
Tanner.**

1 Feb. 6. 32

NO person shall tanne any leather, or use, or have any profit of or by the said mystery, unlesse he had a Tanhouse at the beginning of that Parliament. And except such as have beene or shall be brought up as apprentices, or covenant and hired servants, by the space of seven yeares in that mystérie, and except the wife and such sonnes of a Tanner, as hath beene brought up, and used the said trade by the space of foure yeares, or the sonne or daughter of a Tanner, or such person who shall marrie such wife or daughter, to whom he hath or shall leave a Tanhouse and fars, upon paine of forfeiture of all the leather so tanned, or whereof hee shall receive any profit, or the just value thereof.

No Tanner shall use the mystérie of a Shoemaker, carrier, butcher, or any other artificer, using, cutting, or working of leather; upon paine to forfeit all the Hides and Skins so wrought, or the value thereof.

None shall buy, contract for, or bespeake any rough Hide or Calves skin in the haire, but only Tanners, or tawers of leather, except salt hides, for the necessarie use of ships.

Forfeiture of the Hides and skins or the just value.

None shall forestale any Hydes comming towards any faire or marker, nor buy any hide but

but in open faire or market unlesse it be the hyde
of a beast killed for a mans owne private pro-
vision.

Forfeiture for every hyde so bought six
shillings eight pence.

This Law provides against the insufficient
tanning and drying of leather, and so much as
shall not be thoroughly tanned or dried, to bee
cut out by the oversight and direction of the
tryers and searchers, &c.

None (to overhasten the tanning of their lea-
ther) shall set their furs in tanbills or other pla-
ces where the woozes or Leather may take any
unkinde heats, nor put any leather into any hot
or warme woozes, nor tan any hides, calve skin
or sheeps kin with any warme woozes upon
paine

For every offence ten pound, and to stand upon
the Pillorie three severall market dayes.

This law gives remedie against regrating and
ingrossing of Oken barke before it be stripped,
or after to sell the same againe upon paine.

To forfeit all such barke, or the value
thereof.

Carriers.

Curriers.

NO Currier shall exercise the mysterie of a tanner &c. or other artificer, using cutting of leather during the time he shall use the mysterie of a Currier upon paine,

To forfeit for every hide or skin six shillings eight pence.

He shall not currie any leather in the house of any Shoemaker or other person, but only in his owne house, situate in a corporate or market Towne.

Nor shall currie any kinde of leather (except it be well and perfectly tanned) nor any hyde or skin being not thoroughly drie after his wet season, in which season he shall not use any stale, urine, or any other deceitfull mixture, way, or meanes to corrupt or hurt the same.

Nor shall currie any leather meet for utter sole-leather with any other stuffe than hard tallow, nor any lesse of that than the leather will receive.

Nor any kind of leather meet for over leather and inner soles, but with good and sufficient stuffe, being fresh and not salt, and thoroughly liquored, till it can receive no more.

Nor shall burn or scald any hide or Leather in the currying, nor shall shave any Leather too thin, nor shall gash or hurt any leather in the shaving or by any other meanes, upon paine

To forfeit for every offence (other than in gash-

gashing, or hurting in shaving) fix shillings eight pence, and the value of every skin and hide marred by evill workmanship.

And for every offence in gashing &c. double so much to the partie grieved, as the Leather shall be impaired thereby, by the judgement of the Wardens, &c.

That the leather to be brought by any artificer which is or shall be a cutter of leather, or by his servant, with good and sufficient stuffe to liquor the same, shall be liquored and curried perfectly with convenient speed not exceeding eight dayes in summer, and sixteene dayes in winter, after it be taken in hand upon paine

To forfeit to the partie grieved for every hide and peece of leather not well and speedily dressed ten shillings.

Cordwayner or Shoemaker.

NO shoemaker shal make or cause to be made any Bootes; shoos, buskins, startups, slippers or pantoffles, or any part of them of English leather wet curried (other than Dearskins, Calvé skins or Goat skins, made or dressed like unto Spanish leather) but of leather, well and truly tanned, and curried in manner aforesaid; or of Leather well and truly tanned only, substantially sewed with good thread, well twisted and made with wax, well rassoned, and the stitches hard

hard drawne with hand leathers, without mingling over leathers, *viz.* part of the over leather being of Neats leather, and part of Calves leather.

Nor shall put into Shooes, Bootes, &c. any sheeps-skin, bull or horse-hide-leather, nor into the upper leather of any shooes, startupps, or pantoffles, or into the nether part of the bootes (the inner part of shooes only excepted) any part of any hide, called the wombes, neckes, flank, flank, powle, or cheeke.

Nor shall put into the utter sole any other leather, than the best of the ox or steere hide, nor into the inner sole any other leather than the wombes, necke, powle or cheeke, nor in the trefwels of the double soled shoes, other than the flanks of the hides aforesaid.

Nor shall make or put to sale, in any yeares betweene *ultimo Sept.* and *20. Apr.* any shooes, bootes, &c. meet for any person to weare exceeding the age of foure yeares, wherein shall be any dry English leather, other than Calve or Goatskins made or dressed, like unto Spanish leather, or any part thereof.

Nor shall shew, to the intent to put to sale, any bootes, shooes, &c. upon the Sunday, upon paine

To forfeit for every paire of shooes, bootes, &c. made, sold, shewed or put to sale, contrary to this act, three shillings foure pence, and the just and full value of the same.

Searchers

Searchers and Sealers.

ALL Mayors, Bayliffs &c. and all Lords of liberties, faires or markets, out of the compasse of three miles of London, shall upon paine of forty pound (whereof one halfe to the King, the other to the partie that will sue for the same) for every yeare that they make default, shall yearly appoint and sweare, two, three, or more sufficient and skilfull men to be searchers and sealers of leather within their limits, and one of them shall keepe a marke or seale prepared for that purpose, and shall seale such leather as they finde sufficient and none other.

That it shall be lawfull to any of them to seiz all such leather and ware as shall be insufficiently tanned, curried, made, or wrought contrary to any provision in this act, and shall retain the same, untill it be tryed as hereafter is mentioned, *viz.*

That every such Mayor, &c. or Lord of libertie, or his sufficient deputie, after notice given to him of any such seisure, shall with all convenient speed, appoint six honest and expert men, to trie whether the same wares so seized be sufficient, according to the intent of this Statute or not, the same tryall to be made openly upon some market day, within fifteene dayes at the farthest, next after such seisure, upon the oaths of the tryers.

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Antiquity, Authority,

To forfeit for not appointing such tryers,
five pound.

The tryers if they doe not proceed and doe
their duties therein without delay, doe forfeit
for every default five pound.

Every searcher and sealer of leather which
shall refuse with convenient speed to seale any
lawfull leather, shall for every such offence for-
feit forty shillings.

For receiving any bribe, or exacting any fee
for execution of his office, (other than is limited
by the statute, for searching, sealing, and regi-
string of leather) 20 pound.

For refusing after election to execute the of-
fice 10. pound.

Stewards of Franchises and Leets have po-
wer to heare and determine all the offences a-
gainst this Act, and also by their discretions
to examine all persons suspected to offend
this Statute, or any parcell thereof.

Cloth-makers, Fullers, Sheeremen, Tay-
lers, Shoemakers.

3, 4 Ed. 6, 22. **I**F any of those trades shall retaine to worke in
any of their trades any unmarried person as a
journeyman to worke by the day, or taile work,
or by the gear, for any lesse time, than for one
whole quarter of one whole yeare, the person or
persons offending, shall suffer imprisonment for
one

whole moneth, and forfeit forty shillings for every offence.

If any Iou rneyman of any the said mysteries being required by any persons using the said trades, or any of them to serve by the quarter of a yeare, halfe a yeare, or whole yeare, upon such reasonable wages, as betweene them shall bee agreed, and in case they cannot accord, then for such wages as shall be adjudged and decreed, by one Iustice of peace, Maior, Alderman, Bailiffe, Portreeve, Constable or Tethingman of the Shire, Citie, Townte, Borough, Village, Hundred, Wapentake, or Tything, where any such journeyman shall be required, and shall refuse to serve, shall suffer imprisonment for one whole moneth, and forfeit for every time 20. shillings.

This is fully
repealed, by 5.
Eli 2. c. 4.

All and every the said Tradesmen that shall have three apprentices in any of the said occupations, shall keepe one Iourneyman, and for every other apprentice, above the number of three, one other Iourneyman, upon paine of every default ten pound, the one halfe to the King the other to the partie that will sue for it.

All Stewards of Leets (*inter alios*) hath power to punish and correct all and every offenders, contrary to the tenour of this, according to such presentments as shall bee made before them.

*The second Mechanicke art of M. Linwoods
divifion is Armatura, and Sub hac arte
(saith he) continetur ars Sagittariorum
& Balistariorum. And they fitlie suc-
ceed here, to be inquired of in their due order.*

Artillerie.

33 H.8.c.9.

FOR maintenance of *Sagittarie* Discipline (an
exercife famous and honourable to this
Kingdome for many victorious battels)
and for debarring and repressing of unlawfull
games, the Statute of 33. Hen. 8. ca. 9. was or-
dained, which provideth, that such as be of ten-
der age, bee brought up in the knowledge of
Shooting, and every perion shall provide and
have in his house, for every man child of the age
offeven yeares and above, till hee come to the
age offeventeene yeares, a bow and two shafts
to learne and induce them, under paine (if they
want them one moneth together) of six shillings
eight pence, incurred against the master.

After seventeene yeares every such young
man shall provide a bow and foure arrowes at
his owne cost, and if under threescore yeares
taking wages, and being able to shoot, hee shall
want a bow and foure Arrowes by the space of
one moneth together, shall forfeit for every such
default six shillings eight pence.

No.

No man under the age of 24. yeares shall shoote at a standing pricke, except it be at a ro-ver, whereat he shall change at every shoot his marke, upon paine for every shoot foure pence.

Nor at any marke of eleven score yards or under, with any prick, shaft, or flight, under pain of six shillings eight pence for every shoot.

That Butts shall bee made in every Citie, Towne and place by the inhabitants, according to the Law of ancient time used, and maintained and continued by them, upon paine for every three moneths 20 shillings.

Stewards of Leets have power to heare and determine the offences, and at their discretion, to examine all persons not having bowes, shafts and arrowes.

Unlawfull Games.

THis good Law, as it injoynes a lawfull, so it ^{*Alac. 23.*} ^{*H. 8. c. 9.*} inhibiteth an unlawfull exercise, especially unlawfull games, which are ingendred and nursed by idlenesse, the mother of all vice, the bane of youth, decay of trades, and ruine of all common weale. It is therefore enacted,

That none for his gaine and lucre, shall keepe or maintaine any common house, alley, or place of Bowling, Tennis, Dicing, Carding, or any other manner of game prohibited by any Statute, nor any hereafter to be invented, found or
had

Antiquity, Authority,

had upon paine for every day 40. shillings.

Every person haunting any of the said houses and places, and there playing, forfeiteth for every time, six shillings eight pence.

All Constables and Bailiffes, &c. shall make search every moneth for unlawfull games, as well within franchises as without, or in default thereof, they forfeit for every moneth not executing the same forty shillings.

No artificer, husbandman, handicrafts man, apprentice, journeyman, or servant of artificer, mariners, fishermen, waterman, or any serving-man, shall at any time play, at any the said unlawfull games but onely in the time of Christmas, servants to play in their masters houses, and in their presence.

No person shall bowle in any open place, out of their garden or orchard, upon paine of six shillings eight pence.

But noble men, and every one that may depend in lands or other profits to the yearly value of an hundred pound, may permit their servants and others comming to their houses, to play within the precincts of his houses, gardens or orchards, at cards, dice, tables, bowls, or tennis, and shall not incurre the penaltie of this Statute.

The forfeiture happening within the precinct of any franchise or Leer, the one moyettie shall be to the Lord, the other to the party, that will sue for the same by any action, &c.
and

and out of the libertie of a Leet, the one moiety to be to the King, &c.

Handguns and Crosbowes

FOR that diverse malicious and ill disposed persons did shamefully commit diverse detestable murders, robberies, felonies, riots and routs with crossebowes, litle short handguns, and hagbuts, to the great feare and danger of his Majesties Subjects: And the laudable exercise of the long bow was lately laid apart, which had bene the safe guard and defence of the Realme and an inestimable dread, and terrour to the enemies of the same.

It was ordained, That no person unlesse hee could dispend in lands or other profits, an hundred pound *per annum*, should shoot in any crossbow, handgun, hagbut, or demihauke, or keepe any in their houses or elsewhere, upon paine for every time 10. pound.

Nota, S. Johns Case Co. l. 5. fo. 71. It was adjudged that a dagge and pistoll were comprehended under the word (handgunne) though not expressly mentioned, and that stonebowes were prohibited as well as crossebowes.

No person shall shoot in, carry, use, or have in his house or elsewhere any handgun, other than such as shall be in the stocke and gunne the length

length of one yard, nor any hagbut, demihaube, other than such as shall be in stocke and gunne three quarters of a yard, upon paine of ten pound.

Every person having lands, fees, annuities, or offices of the yearly value of an hundred pound, may seize and take every such Crossebow, and keepe it to his owne use, and also seize every such handguns, &c. being shorter than before is appointed, and to breake and destroy the same within 20 dayes after such seizure, upon paine of forty shillings for every gunne so seized and not broken,

No person vnlesse he have an hundred pound *per annum* (as aforesaid) shall carry or have in his journey, in the King his high way, any crossebow bent, or gun charged, except it be in time and service of war, upon paine of ten pound.

None shall shoot in any handgun &c. at any thing at large, in any citie, borough, or market towne, or within a quarter of a mile of any of them (vnlesse at a butt or bank of earth, in place convenient, or for defence of his person, or house) upon paine of ten pound for every shoot.

If any master command his servant to shoot in any crossebow, handgun, &c. at any deere, fowle, or other thing, except it be at a banke or butt of earth, or in the time of war, he shall forfeit 10. pound.

But some persons for exercise, and some places for defence, and other purposes, are dispensed with by the Statute for using and keeping of handguns &c.

Stew-

Stewards and Bayliffes of Leets have power to enquire, heare, and determine all the offences, so that no lesse than ten pound fine, be assessed upon every presentment and conviction.

The one moietie of every fine to be paid and levied to the use of the King, and the one halfe of the other moietie to the Lord of the Leet, and the other half to the partie that will sue for it by action, &c

A second Iury to enquire of the concealments of the first, and if any concealments bee presented, every of the first Iury to forfeit twenty shillings, one moietie to the Lord by distresse or action of debt, the other to the partie that will sue, &c.

S

Other



Other Lawes here inquirable, which concerne the preservation of Frye of Fish, and of certaine Fowle and beasts of Warren, as Pheasant, Partridge, Hare, and Conies, and some beasts of chase, as Deere.

Fry of Fish.

*1 Elz 18.
Made perpetu-
all 3 Car. Reg. c.
4. except the
proviso for the
River of Tweed
&c.*

THe preamble of this Statute sets forth the destruction of spawn, fry, and young breed of fish in rivers and streams, salt and fresh, insomuch as in divers places swine and dogs were fed therewith, to the hinderance and decay of the common wealth.

It was therefore enacted, that none should take and destroy any young brood or fry of fish, in any waters, brookes, streames, or rivers, salt or fresh, with any manner of net, or any wayes or meanes whatsoever, nor take or kill any Salmons or Trowts out of season, being kepper or shedder Salmons or Trowts.

None shall take in any rivers or places afore-said any Pickorell, not being in length 10 inches fish

fish or more, Salmon 16. inches fish and more,
Trowte 12. inches or more, Bartell 12. inches
or more.

None shall take any fish with any manner of
net, trannell, or any other engin or device (ang-
ling excepted) but only with net, or tranrell,
whereof every mesh shall be two inches and half
in breadth.

But where smelts, loches, mynnetts, bulhead,
gudgions and eles have used to be taken, it
shall be lawfull to use any such nets and meanes,
as had bene thentofore used for that purpose,
so as no other fish be taken, killed or destroyed
therewith.

The forfeiture for every time is 20. shillings,
the fish taken, and the nets, trannells, &c. to
be to the use of the Lord of the Leet for ever,
and to be levied, as amerçiements for affraies
in Leets have used to be.

Steward of Leets to give these offences in
charge, or else to forfeit 40. shillings, and he
may impannell a second Iurie, to enquire of
the concealments of the first Iury, and if
any concealements bee found, every of the
first Iury shall forfeit to the Lord of the Leet
20 shillings, to be levied as before.

This Statute is perpetuated 3. Car. 4. except
the proviso for the River of *Tweed*, &c.

Phefants and Partridges.

3 *Edw. 10.*

2

THis Statute was made to prevent the destruction of the game of Phefants and Partridges, by taking of them by day and night with nets and other engins.

As also the spoile of corne and grasse, by untimely hawking, in the beginning of harvest.

None therefore shall take, kill, or destroy any Phefants, or Partridges, with any nets, engins, or other devices whatsoever in the night time, upon pain of forfeiture for every Pheasant twenty shillings, every Partridge ten shillings, to be paid within twenty dayes after conviction.

Or upon nonpayment, to have one moneths imprisonment, and to be bound by some Iustice of peace for two yeares, never to destroy any such game, contrary to this Act.

The moiety of the penaltie to be to the Lord of the libertie, and the other halfe to him that will sue, &c. and if the Lord shall dispencc with licence, or procure any such taking or killing, &c. then such penalties to bee to the poore of the parish, to be levied and recovered by the Churchwardens or any of them.

None shall Hawk or Hunt with Spaniels in any ground where Corne or other graine shall then grow (except his own ground) when any cared or codded corne, or graine is standing, before

fore it shall be shocked, cocked, hiled or copped,
upon paine of 40. shillings to the party grieved,
unlesse he consent to it, to be levied and recove-
red in manner aforesaid.

Stewards of Leets have power to heare and
determine all offences contrary to this Act.
This Statute is enlarged 1 *Iac.* 27. and 7.
Iac. 11.

Tracing of Hares.

FOr preserving the game of hunting of Hares
which was used and exercised by the King ^{14 Hen. 8. 10.}
and other noble men.

It was provided, that none should trace, destroy
and kill any Hare in the snow, with any Dog,
Bitch, or otherwise, upon paine to forfeit to the
Lord of the Leet for every Hare, six shillings
eight pence, after inquisition thereof found by
the Steward.

This Statute is much enlarged 1 *Iac.* 27.

Breaking the head of any Pond.

IF any by day or night shall breake or de-
stroy the head or damme of any pond, poole, ^{3 Eliz. 21.}
more stagnes, stewes or severall pits, within
which the Lord of the Leet hath fish, to the in-
tent to destroy, steale, and take away the said fish,
shall pay treble damages to the Lord, suffer im-

imprisonment three moneths, and to finde sureties for the good abearing for seven yeares.

Hunting of Deere.

IF any shall chase out, hunt, or kill any deere, out of any Parke or inclosed ground, kept for storing and cherishing of Deere by the Lord of the liberrie, or doe take any Hawkes out of the Lords woods or grounds, shall incurre the same penaltie.

The Statute is generall, extending to the Ponds, Parkes, or inclosed grounds, &c. of all persons, and giveth no power expressely to the Leet to enquire of it. But *M. Kitchin* doth direct the inquirie of it, *Quatenus*, it doth concerne the Lord of the Leet.

Greyhounds, &c.

TO prevent unlawfull hunting by artificers, labourers, servants, and groomes with Greyhounds and other Dogs, It is ordained, That none such or any other layman, not having lands, to the value of forty shillings *per annum*, Nor any Priest or Clark, not having lands to the value of 10. pound a yeare, shall keepe any Greyhound, or other dog to hunt.

Nor shall use any Ferrets, heyes or other engins, to take or destroy any Deere, Hares, nor conies.

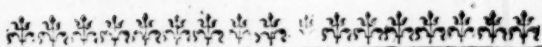
conies nor other Gentlemens game, upon pain of one years imprisonment.

The first part hereof is mentioned by M. Fitzherbert in his charge of a Court Leet, fo. 86.

And because there is no power given by this Statute to inquire here of, it is conceived, that it was here inquitable as a popular trespassse or offence at the Common law before this Statute. *Idco quare.*

These Lawes last before cited, are for reformation of abuses in Hunting, Hawking, and Fishing, which M. Lynwood in his division of Mechanick arts, doth set forth in his fifth sort called *Ars Venationis*, for though the game be Regall and noble, and prohibited to mean persons, yet the instruments, provision and engins incident and belonging to Hunting, Hawking, and Fishing, must passe through the hands of Mechanick persons.

Other



*Other Lawes inquirable for the good
of the Common Weale by ex-
presse Statutes.*

Cottages and Inmates.

31. Eliz. 7.

NOne shall build or erect any manner of Cottage for habitation, unlesse he assign unto it, foure acres of ground at the least, to bee accounted according to the ordinance *De terris mensurandis*, of his owne freehold, and inheritance, lying neare the said cottage to be continually occupied therewith, so long as the Cottage shall be inhabited, under paine of ten pound for every offence.

None shall willingly uphold and continue such a Cottage, under paine for every moneth 40. shillings.

None shall place or willingly suffer any Inmates, or more families or households than one, in any cottage made, or to be made, upon paine to forfeit to the Lord of the Leet for every moneth ten shillings.

But Cottages in Cities, Boroughs, and market townes, or for convenient habitation for workemen within a mile of any minerall workes

workes, Colemynes, Quarries, &c. are not within this Statute.

Musters

FOR remedie of abuses in musters and the hindrances of due service in warres, It is enacted, ^{4 & 5 Phil. & Ma. 3.} That if any person shall refuse to come unto publike musters, and absent himselfe without any lawfull impediment. or appearing, doe not bring with him his best furniture or array and armour, shall for every such offence, have 10. dayes imprisonment, unlesse he pay a fyne to the King off forty shillings, to be estreated in the Exchequer.

If any Muster-Master or Commander, shall by any meanes exact or take any reward for sparing, or discharging any person from his service in the warres.

Or if any Captaine, or other having charge of men for service in the warre, shall for any lucre or gain discharge or licence any souldier to depart out of service.

Or shall not pay unto him his full and whole wages, Conduct, and coat money within 10. dayes after such Captain or leader shall have received the same,

He shall forfeit ten times the value of the reward received,

And pay to every Souldier trebble the summe withholden.

T

Horses

Horses not sufficient in length.

32 H. 8. 13.

THe generation and breed of good and strong Horses, doe extend not only to a great helpe for defence of this kingdome, but is a great commoditie to the inhabitants. And theefore it is provided, that no commoner in any Forrest, Chase, More, or Common whatsoever, shall have or put to pasture into such ground or Common any stoned Horse, above the age of two yeares, not being fiftene handfuls high, to be measured from the lowest part of the fore foot to the highest part of the withers, every handfull foure inches of the standard, upon pain to forfeit such horse or horses.

And it shall be lawfull to any person to seize such horse, and to bring him to the next pound, and to measure him in the presence of three honest men, to be appointed by the Constable, Tethingman, or other Officer, And if he bee not of that altitude, to challenge and retaine the same to his owne use, as his owne proper goods for ever.

The penaltie of every Officer or other persons, appointed to measure any such horse, either refusing to doe it, or not truly measuring, is to pay for every time so refusing forty shillings.

The one moietye to the King, the other to the party that will sue for the same by bill, &c.

That

That the Forrests, Chases, Commons and grounds shall be yearely driven at Michaelmas, or within 15. dayes after, by the Lords, owners, or officers thereof, and by the Constables, Bailies, Tethingmen &c. within whose limits, the Commons and grounds are, upon paine of forty shillings to be forfeited by every officer, at every time that the said drift shall bee omitted, or not effectually done.

And if in any of the drifts there shall be found any Mare, Filly, Fole, or Gelding, that then shall be thought not able nor like to grow able to beare foles of reasonable stature, nor to doe profitable labours, by the discretion of the more number of the said drivers, then the same shall bee killed and buried, or otherwise bestowed.

Stewards of Leets to enquire of all defaults and to certifie the presentments unto the next quarter Sessions, or to the *Custos Rotul.* of the Countie, within 40 dayes after such presentment made, to be heard and determined by them, or else

The Steward to forfeit 40 shillings.

Horfes infect.

NOne shall have or put to pasture, any Horfe Gelding or Mare, infect with scab or mange into or upon any Commons or common fields, upon paine to forfeit to the Lord of the

Leet for every such Horse, &c. so infect, ten shillings.

This offence to bee inquired and presented in the Leet as other common annoyances.

Nota, this Statute in the most and fertilest shires of the Kingdome, doth limit 15 handfuls, and in the rest but 14.

And by the 21. *Jac. ca. 28. in fine.* This Statute for the breed and stature of Horses, and killing of Fillies &c. shall not extend to *Cornwall.*

The life and spirit of all law doth consist and depend upon the due execution of it.

For which purpose there must be fit places and instruments of custodie, and correction for offenders, and an upright care and integrity in officers, for performance of their duties.

Pillorie, &c.

Every one who hath view of Frankpledge, or the precincts and liberties of a Leet, ought to have a Pillorie, and a Tumbrell, whereby to do justice, and every Tything ought to have a Stocks, as well for the keeping and safe detaining of offenders, untill they bee brought before Iustices of peace or other Magistrates, as also for the castigation of malefactors and disordered persons, as Drunkards and others, or else five pound forfeited.

The

The often cited ancient Law of 51. Hen. 3. doth injoyne an inquirie, if any Steward or Bayliffe for any reward, shall remit the judgement of the Pillorie or Tumbrell, and *si habeant in villa pillorium debita fortitudinis, &c.* a Pillorie of convenient strength, as appertaineth to the libertie of their market, which they may use (if need be) without bodily perill, either of man or woman.

Constables, Ale-conners, &c.

IF any Constable, Aleconner, Bayliffe or any other officers within the libertie, doe not well and duely execute their offices, according to their severall oathes and duties.

Purveyer.

IF any Purveyer shall make any purveyance ^{20 H. 6. ca. 8.} for the Kings house of any thing to the value of forty shillings or under, and not make readie payment to the party, It shall be lawfull to the owners to retaine their goods, and to resist such Purveyers.

That every Constable, Tethingman, or chief pledge of every Towne, being required, shall be assistant to such owner or seller, upon paine to yeeld unto the party grieved the value of the things and double damages 20. Hen. 6. ca. 8.

Huy and Cry.

TO abate the power of Felons, it was commanded that Cryes shall be solemnly made in all Counties, Hundreds, markets, faires and other places of great resort, and that immediately upon robberies and felonies committed, fresh suite be made, from Towne to Towne, and from Countrey to Countrey, according to the Statute of *Winton. 13. Edw. 1. c. 1.*

In this service the Constables and Tethingmen have speciall interest, and their contempt or negligence here inquirable.

Outcries made without cause.

BVt if any Huy and Cry be levied, or any outcry made without any ground or cause, to the disturbance of the Countrey, and the peace of the people, inquirable.

Watch and ward.

ALso the Constables ought to see, that the peace be kept, and watch and ward observed from Assention day till Michaelmas, continually all night, from the Sun setting, till the Sun rising, according to the number of the inhabitants of the towne *13 Ed. 1. c. 4.*

And

And that search be *duely* made every moneth for unlawfull games.

That the Statutes made against haunTERS of Alehouses and Drunkards, bee *duely* put in execution.

If the Constables have beene remisse and delinquent in these or any other things, touching any part or branch of his oath and office, It is presentable.

All Officers Defaults.

AND so all other Officers whatsoever, which owe any suite and service to this ancient Court, as Tethingmen or chiefe pledges, Surveyers of highwayes, Searchers and Sealers of Leather and such others, according to the Customes and Iurisdctions of severall Courts.

The profit of the King or Lord of
the Leet.

C*ertum Leta.* In most Leets there is a *duety* or common fine, called in some place *Certum Leta*, payable to the Lord. The reason and Commencement of it is before declared. If that or any custome, or *duety* be withdrawn, it is presentable.

Mort-

Mortmaine.

7 Ed. 1.

TO preserve the Services, due of the Fees and
 reures of Lands, which at the beginning
 were provided for the defence of the Realme,
 and to prevent the losse of the escheats of the
 same, It is ordained, that no person, religious or
 other, shall presume to buy or sell any lands or
 Tenements, Or by colour of any gift, or terme,
 or by reason of any other title whatsoever, or by
 any craft or engin appropre to himselfe any
 lands or Tenements, whereby it may in any
 wise come into Mortmaine, If any doe offend
 it shall be lawfull to the King, and other chiefe
 Lords of the fee, immediate, to enter into the
 Land so aliened, within a yeare, from the time
 of such alienation, and to hold it in fee and as in-
 heritance, and if the chiefe Lord immediate
 be negligent, then the next chiefe Lord may en-
 ter within halfe a yeare after, &c.

Treasure Trove.

IF there bee any Treasur-trove, viz. treasure
 put into the earth, and no man knowes who
 hath hidden it, it belongs either to the King or
 the Lord, according to the ancient rule of the
 Law.

*The saurus inventus competit Domino Regi, et
 non Domino libertatis, nisi per verba specialia in
 facto*

facto libertatis contenta, vel per prescriptionem, antiquitus fuit inventoris, de jure naturali, nunc de jure gentium efficitur Domini Regis.

Estreyes.

ALL Estreyes are here inquirable, that is, If there be any Horses, Piggs, Hogs, Cattell or Swans, which have come within the Lordship, and beene there a yeare and a day, and not claimed, the Lord may have them by prescription.

But such beast ought first to be impounded, in an open pound, proclaimed in three Market townes next adjoyning, and then if none claime them, they shall be seised, and ought to bee put into some severall land, and not into any covert or wood, where the owner cannot finde them.

For if they be in covert, the propertie is not altered, though they be there a yeare and a day.

Wayfes.

C*Atalla Waviata*, when a theefe upon huy and Cry, and pursuite after him, or else for ease of him selfe without huy and cry, doth wave or derelinquish (therefore called by the *Civilians, bonaderelicta*) the goods feloniously stolne by him, or any part thereof, and flyeth away, the King or the Lord is to have it, unlesse the owner of them

them doe make fresh suite after the Felon to attain him for those goods, which if he doth, hee shall have his goods againe, notwithstanding the wayving and seizing.

But note if Goods be stolne and wayved, yet the owner may reseise them 20 yeares after, if they were not formerly seised by an officer of the King or the Lord of the liberty.

Fugam fecit.

IF any upon Indictment of murder before the Coroner be found *quod fugam fecit*, or if any be indicted of Felonie and acquitted, and found that he fled, he forfeits his goods to the King, and the Lord may claime them by Charter, but not by prescription.

The old law, *Si quis post fugam redierit & innocentiam suam pargaverit, nihilominus facultates sue apud fiscum remanebunt.*

Exigent.

IF Exigent bee awarded against one Indicted in Felony, he forfeiteth his goods, though he be after acquitted of the Felonie, the King shall have his goods, and the Lord by Charter, but not prescription.

Out-

Outlawes.

ALL persons outlawed in trespassse, debt, or other personall actions, doe forfeit their goods to the King, and the Lord may have them by Charter.

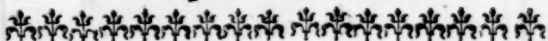
Cleri Convicti.

ALL Clerks convict, men that have the benefit of their Clergie, and doe undergo the burning in the hand (called by the common law Cauterization) doe forfeit their goods notwithstanding.

By-Lawes.

ANy By-lawes for the common weale may be made in a Leet, and are good and will lye against those that do not consent, as to make Cawscyes, Highwayes, Bridges, and such like, 44 *Ed. 3. fo. 19.* But a By-law to repair a Church, binds none but such as do assent, *vid. Co. 5. f. 63.*

A Leet may make by-lawes, the Lord by prescription may distreyn for the Amerciaments, and sell the distresse: For the King may so doe, and the Leet is the Kings, although the Lord hath the profits. *Brooke Leet 34. Prescription 40.*



The Statute for view of *Frank-*
pledge made the eightene
yeere of King *Edward*
the Second.



First, you sh^{ll} say unto us by the oath
that you have made, if all the In-
rors that owe suite to this Court be
come, and which not.

And if all the chiefe pledges
or their dosens bee come, as they
ought to come, and which not.

And if all the dosens be in the assize of our
Lord the King, and which not, and who received
them.

And if there be any of the Kings villaines fu-
gative dwelling otherwhere than in the Kings de-
meanes, and of such as be within the Kings demeans,
and have not abiden a yeare and a day.

And if there be any of the Lords villaines in
Frankpledge, otherwhere than in this Court.

Of customes and services due to this Court with-
drawn, how and by whom, and in what Baylifes time.

Of Purprestures made in Lands and Waters to
annoyance.

Of Walles, Houses, Dikes, and Hedges, set up, or
beaten downe to annoyance.

Of Bounds withdrawne and taken away.

of

Of Wayes, and Paths opened or stopped.

Of Waters turned or stopped, or brought from
their right course.

Of breakers of Houses, and of their receivers.

Of Petie Larons, as of Geese, Hens, or Sheaves.

Of Theeves that steale cloathes, or of Theeves that
doe pilfer cloathes through windows and walls.

Of such as goe on message for theeves.

Of Cryes levied, and not pursued.

Of Bloodshed, and of frayes made.

Of escapes of Theeves or Felons.

Of persons outlawed returned, not having the
Kings warrant.

Of Women ravished not presented before the
Coroners.

Of clippers and forgers of Money.

Of Treasure found.

Of the Assize of Bread and Ale broken.

Of false measures, and of Bushels, Gallons,
Tards and Ells.

Of false Ballances and Weights.

Of such as have double measure, and buy by the
great, and sell by the lesse.

Of such as continually haunt Tavernes, and no
man knoweth whereon they doe live.

Of such as sleepe by day and watch by night, and
fare well, and have nothing.

Of Cloth-sellers and Curriers of Leather, dwell-
ling out of Merchant townes.

Of such as take Church or Churchyard, and af-
ter aspart without doing that which belongeth
thereminto.

Of per-

Antiquity, Authority,

Of persons imprisoned, and after let goe without maineprise.

Of such as take Doves in Winter by doorefals, or engins.

And of all these things you shall doe unto wit, by the oath that you have taken.

A note of the Statutes which are repealed, altered, or expired, since the time wherein M. Kitchen wrote, which I thought fit to set down, in regard many of them (I have observed) are frequently given in charge till this time.

The Statute of Cordweyners, 5 Eliz. ca. 8.

Repealed 1 Iacob. 22.

The Statute of Crow-nets for the destruction of Crowes, Rookes, and Choughes, 24 Hen. 8. 10.

Expired 8 Eliz. 15.

The Statute of Hats and Caps, 13 Eliz. ca. 19.

Expired 39 Eliz. 18.

The Statute against Riots, 1 Ma. ca. 12. continued 1 Eliz. 16. during the Queens life, untill the end of the next Parliament following.

Expired, yet Riots are inquirable as an offence at the Common Law.

The Statute of Wynes, 7 Ed. 6. ca. 5.

Repealed in part 1 Iac. 25. as is before declared,

The Statute touching Horsbread, 31 H. 8. 41.

Repealed by 22 Iac. Reg. 21.

The Statute of Apparell made 24. H. 8. ca. 13.

Repealed 1 Iac. 25.

The

The Oath of a Constable set forth by M. Kitchen with the additions mentioned in the Statute of 21 Ja. which oath contains a short Epitome of the dutie and office of Constables.

YOU shall sweare, that you shall well and truly serve our Sovereigne Lord the King, in the office of Constable for this yeare now to come, you shall see that his Majesties peace be well and truly kept according to your power, and you shall arrest all those whom you shall find committing riots, debates, or affrayes, to the breach of the peace, you shall endeavour your self according to your knowledge that the Statute of Winton. For watch, huy and cry, and the Statutes made for the punishment of sturdy Beggars, Vagabonds, Rogues, and other idle persons comming within your libertie, be duely put in execution, and that the offenders be duely punished, you shall also (upon complaint made unto you) apprehend all Barretours, and Riotous persons, and all Felons, and if any of them doe make resistance with force and multitude of Malefactors, you shall make outcrie and pursue them untill they be taken. And you shall looke and search after such persons as use unlawfull games, and you shall have regard unto the maintenance of Artillerie. And you shall well and truly execute all such proces and precepts as shall be directed unto you from his Majesties

jesties Iustices of peace of the Countie or any his Highnesse Iudges, Iustices or Officers whatsoever, and you shall well and truly present all bloodsheds, outcries, affraies and rescues happening or committed within your libertie; you shall also present all offenders and offences against the Statute made in the fourth year of our late Sovereigne Lord King *James*, intituled, an Act to repressse the odious and lothsome sin of drunkennesse, and also against the Statute in the first Session of Parliament in the first yeare of his late Majesties raigne, intituled, an Act to restraine the inordinate haunting and tipling in Innes and Alehouses, and other victualling houses with the alterations and additions contained in the said Act of the fourth yeare, according to the alterations and additions of the Statute, made in the 21. yeare of his said late Majesties raigne, intituled, an Act for the better represssing of drunkennesse, and restraining the inordinate haunting of Inns and Alehouses, and other victualling houses; And lastly, you shall well and truly doe and execute all those and such other things as are incident and doe belong unto your office of Constable for this yeare now to come. So help you God.

FINIS.

AN
EXPLANATION
OF
The old Oath
OF
LEGEANCE:

CONSISTING
Of these foure generall Heads.

- 1 What Legeance, *Ligeantia* or *Fides*, is
- 2 The extent of it by this ancient Oath, and the severall parts and branches of the Oath.
- 3 The *Modus Reddendi* of aids and supplyes to the KING.
- 4 The Royall Office of the KING in the protection of his people, confirmed at his Coronation.

Together with their severall Subdivisions at large.

LONDON,
Printed by Richard Badger.

I 6 4 I.

AN
EXPLANATION

OF THE

LEGISLATION

CONSISTING

OF THE

ACTS OF THE

LEGISLATURE

OF THE

STATE OF

NEW YORK

FOR THE

YEAR

1850

AND

1851



AN
EXPLANATION
OF THE
ANCIENT OATH
OF
LEGEANCE.



N Oath is an attestation or calling God to witnesse of the truth, touching those things which we say, affirme, and promise to do, upon the holy Evangelists, and before a lawfull Magistrate, authorized to take such an Oath: and that is a legall Oath.

There are two sorts of Legall Oaths used and practised within this Realme (*viz.*) *Iuramentum consuetudinarium*, warranted by the custome of the Realm, which is no more than the Common Law. 2 *Iuramentum Parliamentarium*, an Oath created and enacted by all the three States, as the Oath of Supremacie prescribed 1 *Eliz. cap. 1.*

A a and

An Explanation

and the Oath of Allegiance, 3 *Iacob.* 4.

And no Oath can be imposed upon the Subject but what is enabled by the usage of the Common Law, or by an Act of Parliament.

This ancient Oath was in time very long before the great Charter, as in the former tract is remonstrated. And hath beene confirmed from time to time, in and by *Magna Charta*: So that it hath its power and vigor, both from the common and commitiall lawes of this Kingdome; The Oath (though once before mentioned) doth follow, *viz.*

Heare yee, that I. N. do sweare that from this day forward, I will be true and faithfull to our Sovereign Lord the King and his heires, and truth and faith beare of life and member, and terrene honour. And I will neither know, nor heare of any ill or dammage intended unto him, that I will not defend. So help me God.

This Oath contains a reall protestation of every Subjects dutie to his Sovereigne, and expressly declares what *Subjection* and *Obedience* ought to be expected from them, and implicitly the office of the King towards his people, which is *protection*, for it is truly said, *That protectio trahit subjectionem, & subiectio protectionem.*

It is cleare that the generall obligation of subjection and duties from the people, and the power and prerogatives royall in the Prince are included in the law of God, and are part of the
Law

of the ancient Oath of Legeance. 171

Law of Nature, whereto all Nations have consented, which if I should Illustrate (as well I might) by innumerable testimonies, presidents and examples, as well out of sacred Scriptures and Fathers, as out of Heathen Writers, Historians and others, it would fill up a larger volumne, than this Subject would require.

I am onely to deale with that subjective faith and Legeance, w hich by the provincially Lawes of this land, which are (*Generalis consuetudo Regni Anglica.*) is naturally, and legally *jure hereditario*, due to the person and royaltie of his sacred Majestie.

This Legeance is derived to him from *Lex aeterna*, the Morall Law, called also the Law of nature, part whereof the Law of England is, being first written in *Tabulis rectae rationis*, in the heart of man; and the people by that Law governed two thousand yeares, before it was published and written by *Moses*, and before any judicall or municipall lawes.

For the better informing of the vulgar sort of people herein (for whom it is most convenient) I shall assay to present to the well affected reader some collections to that end whereof I shall (as the matter will beare) endeavour an orderly prosecution.

1 First, a generall proposition what *Legeance*, *ligentia* or *fides*, is.

2 Secondly, the extent of it, by this ancient Oath, and the severall parts and branches of this Oath.

3 The *Modus reddendi* of aides and supplyes.

4 The Royall office of the King, *ad protectionem*, for the protection of his people, sacramentally confirmed at his Coronation.

1 Legeance is a true and faithfull obedience of the Subject due to the Sovereigne, this Legeance and obedience is a due inseparable from the Subject, and is called *ligeantia naturalis*, for, as soone as he is borne, he oweth by birthright *Legeance* and *obedience* to his Sovereigne, *Ligeantia est vinculum fidei*, the bond or obligation of faith and loyaltie. Master *Skency*, *De verborum significatione*, *verbo ligeantia*, faith, That it is derived from the Italian word (*liga*) viz. a bond, league, or obligation.

As a great Lord Chancellor in the case of *post-nati* said, That *ligeantia* understood *sensu currenti* in the language of the time, is *vinculum fidei & obedientie*, the tie or bond of faith and obedience. And he that is borne in any of the Kings dominions and under the Kings obedience is the Kings leige Subject, and borne *ad fidem Regis*, That is (being the proper word used in the Law of England) to be faithfull to the King.

It extendeth further in all cases of denization, which is called *ligeantia acquisita*, where any alien or stranger borne out of the Kings Dominions doth afterwards by any common grant of the King, any Act of Parliament, or other waies or meanes, obtaine the freedome of a Subject within this Land.

Sometimes the extention of this word is yet larger

larger for he that is an alien born out of the Kings Dominions, *ad fidem*, or under the obedience of another King, if he dwell within the Kingdome, and be protected by the King and his lawes, hee is under the Kings Legeance, *ligatus Regi*: and the reason is plaine, For it is such a person any injury is done, either in life, member, or estate, the Law taketh as severe an accompt, and inflicteth as severe a punishment upon the offenders in such cases, as if the partie injured had beene *subditus natus*, borne within his Majesties dominions.

Then great reason, that such persons having the benefit of naturall borne subjects (which is protection from suffering any detriment or harme) should bee as free from acting and doing any wrong, for as they have *idem beneficium*, they must have *idem supplicium*, as the same protection in good actions, so the same correction in bad. It was *Sherley* the Frenchmans case, who being in amitie, and under the protection of King *Philip* and Queene *Mary*, joyned and conspired with divers subjects of this Realme in treason against the King and Queene, and the Indictment concluded, *contra ligeantia sua debitum*; The case of *Perkin Warbeck*, 15. H. 7. and of the Portugall adherents to Doctor *Lopes* in the 36. yeare of Queen *Elizabeth*, might here bee remembered to this purpose.

We have seene what Legeance is, let us consider the extent of it, in its explication by this ancient Oath, which I may well terme *vinculum vinculi*, or *ligamentum ligaminis*. That Legeance,
Faith,

Faith or *Fealtie*, which is annexed by birthright, is by this Oath solemnly explained, attested and confirmed, and is called *legalis ligeantia*, established by the wisdom of ancient times, and had its beginning with the nationall laws of this Island in the time of the *Brittons*. It is true that this oath doth not create the Legeance of a subject, but doth demonstrate the fruits of faith and obedience, which must ever bee concomitant with subjection: For as it was gravely observed in the booke of *Post-nati. fo. 64. Subiectio, fides et obedientia*, must be in a true and lawfull subject, of what Nation soever, and cannot be severed, no more than true faith and charitie in a true Christian. And hee that hath these three from his nativitie is *ligens Regis*, the Kings Leige man. Hence I inferre, that *ligeantia* is *visibilis* and *invisibilis*, visible as to subjection and obedience, and invisible as to fidelitie and loyaltie, this must bee rooted in the heart, the other expressed in the action. A man may bee a subject borne, and actuate an externall obedience, yet *Cordi nulla fides*, hee may be disloyall in the heart, Therefore the sacred Scripture inhibits the very thoughts of a man against Kings and Princes the Anointed of God; *Nolite tangere unctos meos*, he doth not say *ne tangite*, but *nolite*, have not so much as a will to touch mine anointed; *In cogitatione tua Regi ne detrahas*, deprave not the King even in thy thoughts. Many more precepts might I here instance. To prevent the mischievous events of disloyall imaginations, and to confirm the Legeance of the heart, and to discover

agnos

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agnos & badis, the good from the bad subject, the prudent policie of pristine ages, invented formes of oathes in most Kingdomes, as may be probably conceived. In this Island of great *Britaine*, this oath of Legeance was first invented by King *Arthur*, At which time the Leet was called *Folkemote* (*viz.*) a meeting of the people, and this appellation is retained in *London* to this day.

Amongst the Lawes of King *Edward* the second, before the Conquest, it is thus exprest, *Omnes Principes & Comites, Proceres, Milites & liberi homines debent jurare, &c. in Folkemote, & similiter omnes Proceres Regni, Milites, & liberi homines universi totius Regni Britannia facere debent in pleno Folkemote fidelitatem Domino Regi, &c. Hanc legem invenit Arthurus, qui quondam fuit institutissimus Rex Britonum. &c. Hujus legis auctoritate expulsi Arthurus Rex Sacacenos & inimicos à Regno, &c.* And by that meanes hee did settle and co-unite his whole Kingdome together, *Ita consolidavit & consideravit Regnum Britannia universum super in unum.* It is therefore said, that *Lex ista diu sopita fuit & sepulta, donec Edgarus Rex Anglorum illam excitavit & erexit in lucem, & illam per totum Regnum firmiter observari praecepit.* This law was laid in a slumber and forgotten untill King *Edgar* (who is stiled *Rex pacificus*) did revive and bring it to light, and commanded a strict observation thereof throughout his Kingdome: For during the Heptarchie, and untill King *Alfred* had made the way for settling of a Monarchicall government it could not well take

place, this oath afterwards grew so usefull and advantagious for the absolute government of this Island, as that all the *Danes* who were dispersed in their abode amongst the *English*, and refused to submit to this oath, were all upon the Feast of *S. Brice* put to the sword, by the politike directions of King *Eihelred* and his Councell. *Hujus legis auctoritate Eihelredus Rex subito uno eodemq; die per universum Regnum Danos occidit.*

For the same end and purpose, as is herein before remembred, was that oath of Allegiance justly conceived in the high court of Parliament, holden *An. tertio Jacobi*, upon the occasion of that horrid and dreadfull Gunpowder treason, as our late learned Sovereign, in his monitorie preface to all Christian Princes, prefixed to his Apologie for this oath, doth averte. *Horrenda illa & prodigiosa conjuratio qua per tormentarii pulveris impetum destinabatur, de cujus immanitate nulla unquam aetas conticescat.* That most horrid and prodigious Gunpowder conspiracie, whereof no age will ever be silent. And further saith his Majestie in that Apologie, *Nec in alium finem constitutum est juramentum, quam ut inter fideles subditos & perfidos proditores discrimen aliquod extaret.* That this oath of Allegiance was constituted to no other end, but to put a difference betweene faithfull subjects and perfidious traitors.

This later is enlarged in the occasionall particulars, but the generall scope thereof is tacitly and implicitly comprised, in that other ancient and well digested oath, this maine difference stands

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stands between them, the former oath is confined as to persons, time, and place; the later hath its extension to all persons, without any exception.

There is the like oath used in the civill or Imperiall law, called *juramentum ligei*, one of the old, another of a new invention, cited *Lib 3. Summe Hostiensis, fo. 773.* and thus begins. *Ego T. juro super sancta Dei Evangelia, quod ab hac hora ero fidelis contra omnem hominem, &c.*

The Civilians distinguish two sorts of oaths, *Judiciall*, and *Extrajudiciall*. And their oath of *juramentum ligei vel fidelitatis*, they ranke in the number of extrajudiciall oaths. But our ancient oath of Legeance, is, and well may bee accounted in the judiciall number, and my reason is, whatsoever oath is administred in a Court of Record, as the Leer, and before a judge of Record, as the Steward is, and according to the prescript forme of our common Law, is judiciall; whatsoever oath is administred *prater legem*, and not according to the precise rule of Law, is extrajudiciall. This oath is not so administred, but *juxta legem & normam legis*, and therefore is not extrajudiciall. But why doe I endeavour to light a candle at noone, or to explaine that which is plaine enough in it selfe?

1 First for the time, it is indefinite, and without limit from this day forward.

2 The *terminus a quo*, you, every subject whom the Law injoynes, to take this oath.

3 The qualities or properties required that is, to be true and faithfull.

4 *Terminus ad quem*, to whom? To our Sovereigne Lord the King, and his heires.

5 In what manner? *And faith and truth shall beare of life and member.* That is (as in *Calvins* case) untill the letting out of the last drop of our dearest heart blood. And I must adde what is there omitted, *And terrene honour*, That is the uttermost of our estate and livelihood.

6 The circumstance of place where these duties of Legeance concerning our lives and estate ought to be performed, it must bee in all places whatsoever, without any circumscription, *for you shall neither know nor heare of any ill or dammage, &c. that, you shall not defend.* The parts of this oath for the better instruction of the common people, I shall summe up in this one proposition, which I will presume briefly and succinctly to handle. Every subject must be true and faithfull to the King and his heires, to the uttermost of his life, and fortune, or estate.

1 The King hath a double capacitie in him, one a naturall bodie, being descended of the blood Royall of the Realme, which is subject to death, infirmitie, and such like.

2 The other is a politike bodie or capacitie, so called, because it is established by the policie of man; and in this capacitie the King is esteemed to be immortall, invifible, not subject to death, infirmitie, infancie, non-age, &c. This Legeance is due to the naturall person of the King (which is ever accompanied with the politike capacitie, that is, the Crowne and Kingdome) And is not due to
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the politike capacitie only, distinct from his naturall, (as by divers reasons in *Calvins* case is at large recited and resolved) For if that distinction might take place, then would the *faith, leageance, and obedience*, of every subject due to his Sovereigne, be appropriated, *regimini, non regenti*, to the government of a Kingdome, not to him that ruleth or governeth. In the time of *Edward* the second, at a Parliament holden at *Torke*, *Hugh la Spencer*, the sonne being nominated and appointed, to serve the King in the office of Chamberlein, did draw unto his adherence *Hugh Spencer* his father, and they both usurping upon the Kings Royall power, and compassing about, to have the sole government of the land to themselves, did traiterously contrive a declaratorie writing, which they would have compelled the King to signe, purporting (amongst other mischievous positions) That homage and oath of Legeance, was more by reason of the Kings crown, (that is his politike capacitie) than by reason of the person of the King; whence they inferred these damnable and detestable consequents.

1. If the King did not demesne himselfe by reason in the right of his Crowne, his leiges were bound by oath to remove him.

2 That sithence the King could not be reformed by suite of Law, that ought to be done *per asperitoe*, by asperitie of Compulsion.

3 That his leiges be bound to governe in aide of him, and in default of him. All which execrable opinions were condemned by two Acts of Par.

Parliament, one in the 14. yeare of the raigne of the same king *Edward* the second, called *Exilium Hugonis le Despenser patris & filii*, the other *An. i. Ed. 3. cap. 1.* which confirmed the banishment of these *Spenfers*.

Legeance then by law of nature (before any judiciall or municipall lawes were recorded or reported) is due to the sacred person of the king alone, immediately, and without any intervallum or moment of time, and before the solemnitie of his Coronation, and so must remain to him and his heires, and entirely without any partnership with him, or any intermission in default of him, & *omnimodo*, by all wayes and meanes.

It is due to his naturall person, accompanied with his politike *capacitie*, indistinctly without any partition or separation, and this oath is a politicall confirmation of that *Legeance*.

It is due to him as he is *mixta persona*, anointed by the hand of the priest, as he is supreme head under *Christ*, in all causes and over all persons, as well Ecclesiasticall as Civill.

The qualities prescribed by this oath are naturally incident to *Legeance*, *veritie*, and *fidelitie*, to be true and faithfull, and they comprehend what before is spoken of, *faith*, *obedience*, and *subjection*, *faith* unto his person, *obedience* to his lawes, *subjection* to his government, or all, to all, *faith*, *subjection*, and *obedience* to his person, lawes, and government: By the ancient lawes of this Realm, this kingdome of *England* is an absolute *Empire* and *Monarchie*, consisting of one head which is the king,

king, and of a bodie politike (which is the common wealth) compact and compounded of many and almost infinite severall members, all which the law divideth into severall parts, the Clergie, and the Laeticie, this *Legeance* requires a due observancie of all the Morall lawes, contained in both Tables of the Decalogue. To obey our king in the true and sincere worship of God, according to the canonicall discipline of the Church, ratified by his regall authoritie. To obey him in abandoning all apostasie from Christianitie, heresies, schisms, factions, fond and fantastike opinions, repugnant to the Orthodox doctrine of the Church. To obey him, in acknowledging a supremacie in him, and a subordinate superiority in his Ministers and Magistrates over his people. To obey him in all the rights of distributive and commutative justice, in doing good, as works of mercy, charitie, and pietie, and eschewing evill, that is all sorts of felonies, fraud, force, deceit, and all offences whatsoever, which derogate from, or deprave the peace and government of the Realm. The performance of these duties makes a true and faithfull subject.

The latitude and extent of this veritie and fidelitie from the subject to the Sovereign, is twofold, The extent first of *life and member*; secondly, of *terrene honour*, this oath, wherein the *prerogative* of the king is considerable generally according to the speciall law of nature, called by some *jus Gentium*, and stiled by our common law, *lex rationis*, the law of reason, and more specially according to the municipall lawes and customes of this kingdome.

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The King is *pater patria*, and every subject is bound by the law of nature to hazzard, and adventure, both life and member, for the safetie of the King and Countrey, either against privie and traiterous conspiracies, civill mutinies, and dissensions, or hostile Invasions, or unjust warres, or in the execution of legall acts of justice. The Poet could say, *Dulci est pro patria mori*, a sweet thing it is to die for our Countrey, and as sweet a thing it is to die *pro patre patria*, for the father of our Countrey, for indeed both come to one.

There may bee many causes of warre, which when they are discussed, and resolved by the King and State, the justnesse of them is not to be disputed by every private person.

The end of all warre should be *peace, bellum geritur ut pax acquiratur.*

1 It is just cause of warre, when publike negotiation and commerce is interrupted or disturbed, and for recoverie of things wrongfully, and by force taken from us by forraigne enemies.

2 Or if any shall goe about to usurp upon the Kings right of dominion, in any of his kingdoms, It is just cause of warre. After that *David* by Gods direction went up to *Hebron*, and was anointed king over the house of *Iudah*, upon the death of *Saul*, he maintained a long warre against *Ishbosheth* the sonne of *Saul*, for usurping the kingdom of *Israel*, 2 Sam. 2.

The revenge of an injurie or disgrace despitefully done either to a Prince or to his Embassa-

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dors is likewise a good cause of warre, when *Nash* the king of the children of *Ammon* dyed, and *Hanun* his sonne succeeded in his stead, *David* sent messengers to comfort him, upon the death of his father, their entertainment was not suitable to their errand, *Hanun* by the advice of his Princes tooke *David's* servants and shaved them, and cut off their garments in the midst, *a matibus usq; ad pedes*, and so sent them away.

For this great disgrace and abuse (the text saith *grandem contumeliam sustinuerunt*) *David* did justly wage battell against the king of the *Ammonites*, *Chro. I. 19.*

He did the like against *Sheba* the sonne of *Bechri* a man of *Belial*, for blowing a Trumpet, and solliciting the men of *Israel* to revolt from *David*, to him. *Samuell 2. chapter 20.* many other particulars might be here instanced.

Next how farre the preeminence of a king (as to life and member) is to be considered, specially by the common and Statute lawes of this kingdom; by the common and positive lawes of *England*, The subjects are bound by their *legeance* to go with the king, and by the Commandement of the king, in his wars aswell within the Realme as without, and this doth copiously appeare by severall statutes, which seeme to bee but declarative of the common law, as *1 Ed. 3. cap. 7.* which mentions the conveyance of souldiers into *Scotland*, *Gasconie*, or elsewhere, *18. Hen. 6. cap. 19.* which maketh it felonie, If any Souldier retained to serve the King in his wars, doth not goe

Life and member considerable by the common and statute lawes.

with, or doe depart from his Captaine without licence, the preamble of the Statute tels us, that the Souldiers so doing, did as much as in them was, decay the honour and reverence of the king; And by the Statute of *7. Hen. 7. cap. 1.* Forasmuch as the offence of departing or not going, did stretch to the hurt, and jeopardie of the king, the nobles of the Realme and all the Common weale thereof, therefore he or they so offending should not enjoy the benefit of Clergie. By the Statute *11. Hen. 7. cap. 1.* It is expressed, that the subjects of this Realme, are by reason of their allegiance bound to serve the Prince, from the time being in his wars for the defence of him and the land, against every rebellion, power, and might, reard against him, either within the land or without, and this statute together with some others were adjudged, *Trim. 43. Eliza.* to be perpetuall acts and not transitorie for the kings time only wherein they were made.

As peace is the true end of warre, so peace, must be preserved, that warre may be avoided; In the times of peace, there must bee preparations for warre, by causing musters, and martiall meetings, to be assembled at times convenient: And therein the Lieutenants their Deputies of each severall Countie, with Muster-masters, and other subalterne officers have a speciall interest of imployment, and therefore provision was made, *4. & 5. P. & M.* for the better ordering of Musters, Captaines, and souldiers. In the time of peace, the common and municipall law of this kingdome,

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kingdome provides for suppressing of all rebellions, insurrections, and riotous assemblies, To which end the king commits the custodie of each countie to an officer very ancient, with us called a Sheriffe, who for the service of the king, and peace of the countrey, hath power to raise the power of his countie. And every subject is bound to attend him, as the kings deputie, in causes of publike service, warranted by the lawes: and this officer is to dwell in his proper person within his Baylywicke, that he may the more readily attend the kings service.

The second point is, *terrene honour*, and herein I must walke warily, *passibus equis*. First must be determined what is meant by *terrene honour*. Some would have it to be the outward worship and ceremoniall honour, that wee can doe in this world to the king, next to the service of God. If that were only intended by these words, it were but a shadow in regard of substance, for in devoting our life and blood, is comprehended the highest pitch and streyne of honour that might be; Our Saviour *Christ* his words, *Matth. 6. 25, Is not life more worth than meate? and the body than raiment?* will fully satisfie us, that the life of man is above all worldly riches, and honours; and therefore something else must be conceived out of these words, more than a shadow, or ceremonie.

By the first commandement of the second table, in the subdivision of the persons to whom honor is due, there is in the opinion of many Divines, a

kind of particular honor or esteem to be ascribed to a man who is more wealthy than his neighbour, in regard of the talent of terrene riches wherewith God hath endowed him, and thereby enabled him to supply the King and the common weal, by rendering his respective dues and duties unto them, in a larger proportion than other persons who are inferiour in their worldly meanes, *Dat census honores*. Then sithence all riches, wealth and substance, are called *terrene, quiae terris & terrenis accrescunt*, because they proceed and have their being out of earth and earthly things; and are the causes of particular honour, and esteem, and of distinguishing the degrees of men, as husbandmen, Yeomen, Gentlemen, Esquires, and the like, and also of tradesmen, both of Merchandize, and manufacture, according to the customes of this Kingdome.

It will follow by good consequence, that, as the King is to bee honoured and obeyed with life and member, so with earthly substance, according to the demension thereof, and the degree of each mans earthly honour; Saint Paul in the generall cleares this point of *prerogative, jure divino, Romans 13. Omnis anima potestatibus sublimioribus subdita sit, &c.* Let every soule bee subject to the higher power, For there is no power but of God, verse 2. whosoever therefore resisteth the power, resisteth the ordinance of God, And the Apostle pursues it with *Ideo necessitate subditi estote, &c. verse 5. Wherefore yee must needs bee subject, not only for wrath, but also for conscience sake,*

sake, Verse 6. For this cause pay you tribute also, For they are Gods Ministers attending continually upon this verything : Verse seven. Reddite ergo, Render therefore to all their dues, tribute to whome tribute is due, custome to whome custome, feare to whome feare, honour to whome honour : By this text, mee thinkes the verie words *terrene honour*, is sufficiently explained in the generall word *debita*, dues, specified in the particular words *tribute, custome, &c.* One thing more is worthy consideration, upon that of *Romans 13.* the generalitie of the Apostolicall edict, *Omnis anima subdita sit, &c.* No person either of Clergie or Laeticie is here excepted. Though Bellarmine and other Romish Champions, would have *bona clerici tam Ecclesiastica quam secularia*, the goods of an Ecclesiasticall man, as well spirituall as temporall, to be free from tribute unto secular princes, yet by their favour, both by the law of God and the law of nations (and then by our common law no man doubts it) all Ecclesiasticall persons (as they make a part of the common wealth) are subject to their prince, as well in their secular goods, whether they be *patrimonialia, seu mobilia*, without any manner of exemption, nay such goods as we call Ecclesiasticall, being within the dominion of the prince (who hath a generall charge of conserving all subjects goods) ought to be charged with necessary dues and duties to the king. For if they be (as they are) upon judgements liable for the payment of debts to particular persons, then a *fortiori* to the king for tributes, taxes and subsidies. And great
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reason, for they have the same protection, with some more priviledge, and therefore ought to acknowledge the same subjection due to him.

To adde something more to *terrene honour*, and the explanation thereof, it must signifie so much as the first word of the fift Commandement implies, *Honora patrem, &c.* It is received amongst all Divines, that under the names of *patris & matris*, are meant not only our naturall but our civill parents, as Kings and Princes and others constituted in authoritie under them; and by the word *Honour*, is not intended a bare outward respect, but reverence attended with feare, *honor bene facienti, timor male agendi.*

This word *honour* doth first include all those duties, which wee owe, not onely to our naturall parents, but to our prince, who is *Pater civilis*, and the duties are respectively these, *viz.* love, observance. worship, obedience, aide, and supply, in relieving their necessities, and all this must be done, *corde, ore, & opere*, in thought, word, and deed.

The second dutie, to pay their dues unto their princes, willingly and freely without discontentment, *tribute to whom tribute. &c.* and what ever payment else is necessarie, for the maintenance of their estate, partly that they may be able to repress enemies, and rebels, and partly, that having sufficient maintenance from the people, they may not be distracted, but bend their whole indeavour to the good government and protection of their Subjects. S. *Ambrose* commenxing upon

upon that 13. to the *Romanes*, citing the words of our Saviour Christ in *S. Matthew ca. 22. Reddite quæ sunt Cæsaris, Cæsari. Give unto Cæsar that which is Cæsars*, doth interre, *Huic ergo (viz. Principi) subijciendi sunt, sicut Deo, cujus subjectionis probatio hæc est, cum illi pendant tributa vel* (saith he a little before) *quæ dicuntur fiscalia*, Therefore the people must be subject unto their prince, as unto God: The prooffe, (or badge, or cognizance) of our subjection is, that we pay tribute, or such things or duties, as are for the supply of the kings treasure, customes, tributes, subsidies, and all other dues and duties, are therefore rendered unto the prince, as a token and argument of subjection, whereby his subjects testifie that they are truly thankfull for the protection which they receive from the powers which are from God.

A moderne writer upon the *Pandects* of the Fulbeck. Law of Nations, *cap. 10.* maintaines, (and well he may) that in the law of tributes, subsidies, and prerogatives Royall, all nations have consented; And as (saith he) it becometh every Monarch to have a watchfull care of his subjects good, and bend the force of his minde to the preservation and maintenance of their safetie, and good estate: So subjects should not grudge to pay unto them tributes, and subsidies, and other publicke impositions, that all necessarie charges may bee substantiallyl defrayed, all convenient designs produced into act, and condignely executed.

By an Act of parliament, 1 *Elizab. cap. 3.*
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Stat. 1. Eliz.

touching the recognizing of Queene *Elizabeth* to the Crowne, It is there declared by all her subjects, representing the three estates of this Realm, that they, as thereunto constrained by the law of God and man, did recognize her Majesties right, title, and succession to the Crowne, and did hereby promise, that they would assist and defend her Majestie, and her rights, and titles, in, and to her imperiall estate, crowne, and dignitie, in all things thereto belonging, and at all times to the uttermost of their powers, and therein to spend their bodies, lands, and goods, against all persons whatsoever, that in any thing should attempt the contrary.

Stat. 1. Jac.

By the like Act *Anno primo Jacobi*, purporting a recognition, that the Crowne of England was lawfully descended to king *James* his progenie and posteritie, his Highnesse subjects did thereby acknowledge his Majesties lawfull descent to the imperiall Crowne of all his Realme, and his goodnesse, and ablenesse, to protect and governe them in all peace and plentie, and thereunto did humbly and faithfully submit, and oblige themselves, their heires, and posterities for ever, untill the last drop of their blood were spent.

In *Magna Charta*, ca. 14. no man is to be amerced, but according to the quantitie, and qualitie, of the offence. A freeman saving to him his contentement (that is his free hold-lands) A merchant likewise, saving to him his merchandise, and a villaine or bondman, saving to him his waynage (or gainure) as it is 3. *Ed. 1. cap. 6.* that

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is his land which hee held in villenage; and the reason of this *salvo*, was (as is justly conceived) that these things might be respectively enjoyed by the owners of them, and thereby they might have wherewithall to sustaine themselves and their families, and to pay their duties to their princes. It is most infallibly true; and no man can justly impugne it, That the King hath power aswell of *terrene honour*, that is a mans estate, as of his life.

1 By the law of God, as a signe or Character of our subjection.

2 By the law of nature, as a testimonie of regardfull thankfullnesse, for his vigilant and assiduous care, paines, and protection.

3 By our owne provinciall lawes, as the finewes of the states preservation. *Thesaurus regis, securitas plebis*, The Kings treasure, is the peoples securitie. Money is the strength of a State.

But *de modo reddendi*, the manner of rendring to our prince his dues, according to the true meaning of this ancient oath of Legeance, is the difficult question, *S. Pet. 1. c. 2. v. 13.* giveth this monition, *Submit your selves to every ordinance of man for the Lords sake, whether it be to the King as supreme, vers. 14. or unto governours as unto them that are sent by him, &c.* Though by the rule of *S. Paul* the substance of every princes power, is the ordinance of God, yet the specification of the circumstances thereto belonging, as in regard of places, persons, Jurisdiction, subordination, and the

² Branch, *De modo reddendi.*

rest, is an humane ordinance, introduced by custome, or positive law. Hence I will deduce this generall position. That all subjects are bound by dutie and leageance to their princes, to render to them civill obedience, and their dues, and duties, according to the laws and customes, of that kingdome wherein they live, then by consequence, the subjects of great *Britain* to their gracious Sovereign, according to the Lawes and customes of our Nation.

To capitulate here all the casuall dues, and duties, annexed to his prerogative, as forfeitures, escheates, confiscations, or such like, or wardships, mariages, primer seisin, and many more at large recited, and declared by the statute, intituled, *Prærogativa Regis*, published in the 17. yeare of *Ed. 2.* Or to make particular reherfall of other ordinary dues, as customes, aide and such like, were cleerly out of the scope of my intencion. But faithfully to deliver by what ways and means the king may require any extraordinarie aid, and supply out of each subjects particular estate, or terrene honour, *hic labor, hoc opus est.*

The payments
of dues and
duties most
proper by Par-
liamentary
gift.

Some not well affected to the constant government of this kingdome, would have the kings necessities, supplied by impositions, and taxes to bee raised and levied by the kings meer and absolute power, without any committiall consent of peeres, and commons; others more orthodox (if I may so terme it) to the happinesse of his Majestie, and tranquillitie of the State, doe hold, (and so it hath been declared by ancient & modern parliaments)

that

that a parliamentarie gift, subsidie or supply, bee it of what name soever, from the subject to the King, is most proper and competible, with the ancient rule and government of our kingdome. The very name of parliament is *sacrum quoddam*, and the nature of it most sublime, and so long as the members are in unitie with the head, most absolute and illimited.

The kingdome of England is a most ancient Monarchie, under the rule and government of a *Suprema Leige Sovereign*, conform, and according to the peculiar lawes, and customes of the nation; confirmed by severall Parliaments: and whereas all other nations, as *Braſton* saith, were governed by written lawes, *Sola Anglia usa est in suis finibus jure non scripto & consuetudine, in ea quidem ex non scripto, jus venit, quod usus comprobavit. Sed absurdum non erit leges Anglicanas (licet non scriptas) leges appellare, cum legis vigorem habeat quicquid de consilio, & consensu magnatum & reipublica communi sponse; autoritate Regis sive principis præadente; jure fuerit definitum & approbatum*, England only is ruled by a law not written, and by custome which by usage hath beene approved; and it were absurd (because not written) not to call them lawes, inasmuch as whatsoever by the counsell and consent of the Peers and commons, and by the kings royall authoritie shall bee determined and allowed, hath the power and vertue of a law. Herein we may observe an authentike description of a parliament, I cannot passe by the word *Quicquid*, there is some remarkable *energie*, in the generali-

Lib. 1. Cap. 1.

All persons &
causes subject
to Parliament,

tie of it, that must not goe without a *Quisquid*. Some would have religion and Ecclesiastike persons (and do not stick to murmur loudly of it) exempt from all parliament power: but our Author (who wrote in the later time of *Hen. 2.* well nigh 380 years agoe, not long after King *Iohn* had coactedly delivered over his royall Crowne into the hands of the Popes Legat, and thereby admitted papall incroachments of jurisdiction in this kingdome) although with the common errors of those times, he seemed to advance pontificall power, in Ecclesiasticall causes, here (*cui scil. Papa, alioqui invictissimi etiam Imperatores & Reges cesserunt*, as it is said in the prologue to *Bracton*, yet he brings all jurisdictions and matters whatsoever with his *Quicquid* within the cognizance and power of parliament.

Parliament the
supremest
court of ju-
stice.

A parliament is the supremest Court of Justice in this kingdome, an assembly of the King, the Lords and peeres and the Commons of the *Realme*; The word *Parliament* is a French word and signifies originally as much as *colloquium*, a conference or treatie betweene the King and his Subjects. In this great Court the kings of *England* have ever had *authoritatem precedentem*, as *Bracton* notes before aswell in regard of their naturall persons having supremacy and preeminence, precedence, over and above all persons, as of their politike capacitie, and have the sole and only power to call and convene parliaments, and to do all other kingly offices. And they had and ever have *potestatem subsequentem*, a power to rati-
fic

he and confirme such acts, and lawes, and Statutes whatsoever, as are treated and agreed upon by the peeres and commons. The king, as learned *Cambden* observes, and hath it from *Bracton*, *supremam potestatem & merum imperium apud nos habet, nec in imperii clientela est, nec in vestituram ab alio quovis accipit, nec prater Deum, superiorem agnoscit.* In short, the king is supreme over and above all persons and owneth no superiour but God.

The parliament is called by writs of summons directed to each peere of the land, and by writs of summons directed to the Sheriffes of each severall countie. And it is called by the advice and consent of the kings councill: but note, the king of England is armed with divers Councils.

The calling of
the parliament

One which is necessarieto be explained, called *Commune Concilium*, in all writs and proceedings, and that is the high Court of parliament.

A second, which is *grande* or *magnum concilium*, which is sometime applyed to the upper house of parliament, sometimes out of parliament to the peeres of the realme, Lords of parliament.

Thirdly, he hath his *legale concilium*, his judges of the law for law matters.

The Fourth and last, and not the least is the kings *privatum concilium*, his privie Councillors of State. The king hath, as all the kings of England ever had his *sacros* and *secretos consiliarios*, his sacred guard of privie Councillors, *Majorum et sapientissimorum è regno*: Amongst whom he sitteth in person and moderates their consultati-

ons

ons in imitation of the precepts and presidents recorded in holy Scripture,

Where no counsell is, the people fall, but in the multitude of counsellors there is safetie, Prov. 11. 14.

Every purpose is established by counsell, and with good advice make warre, Prov. 20. 18.

Moses had Iethro and Aaron, Ioshua the sonne of Nun, his successor, Caleb and Eleazar the high priest for his privie counsellors: David had his succession of counsellors, Samuell the prophet, Ionathan whose love to him was wonderfull, Abiathar the priest, and Nathan also a prophet, with many others. To return to our owne nation, king Iue had his Cinredus, whom hee calls his father, Hedda and Erkenwald his bishops, with many others, Alfred had his Plegmund Archbishop of Canterbury, Wenefridus Bishop of Worcester and others, Athelstane edicted his lawes *Ex prudenti Vlfhelma Archiepiscopi aliorumque Episcoporum consilio*, by the counsell of his Archb. and other Bishops, and so successively the kings of England ever had as before, their privie counsell, such and so many as the prince shall think good, who doe consult daily, or when neede is, of the weighty matters of the Realme, to give therein to their prince the best advice they can. The prince doth participate to them all, or so many of them as he shall thinke fit, such legations, and messages as come from forraigne princes, such letters or occurrents as be sent to him selfe, or his secretaries, every Counsellor hath a particular oath of faith and secrecy administred to him, before hee bee admitted a privie counsellor. To

of the ancient Oath of Legeance. 197

To shew the extraordinary regard, and royall use of the kings counsell. Let us looke backe upon the case of 5. Hen. 4. upon an agreement for an exchange had for the Castle of *Barwick*, between the king and the Earl of *Northumberland*, wherein the king promised to deliver the Earle lands and tenements, to the value of that Castle by these words, *per advise & assent des estates de son Realme & son Parliament, &c.* By the advice and assent of the estates of his Realm (So as the Parliament be before the feast of *S. Luke*) or otherwise by the assent of his great Counsell, and other estates of his Realme, whom the king shall assemble before the said Feast, in case there be no parliament before, &c. as by the instrument thereof dated at *Lichfield* 27. Aug. 5. Hen. 4. remaining in the Tower may appeare. To this counsell the Oracles of the Common law, the grave and reverend Judges, *Leges loquentes Reipublica* (God grant in all Successions they may be so) have had their resort from time to time, in all ages, for advice and directions in their proceedings, aswell in criminall causes, as in matters of right and propertie, as it was observed by the learned Lord *Chancellor*, I will touch but two which are cited by that honourable Judge in cases of propertie. *Thomas Vghtried* Knight, brought a *Forme-don* against a poore man and his wife; They came and yeelded to the demandant, which seemed suspicious to the Court, the matter being examined, judgement was stayed, because it was suspicious. And *Thorp* said, that in like case of *Giles Blasket* it was spoken of

The regard
the Pryve
counsell.

of in Parliament: And (saith he) wee were commanded that when any like case should come, we should not goe to judgement without good advice: wherefore sue to the councell, and as they will have us to doe, we will, and otherwise not in this case. 2. *Greene* and *Thorpe* were sent by the Judges to the Kings Councell, (where there were twentie foure Bishops and Earls) to demand their advice, touching the amendment of a writ, upon the Statute of 14. *Ed. 3. cap. 6.* which was an Act made for amending of Records, defective by misprision of Clerks.

By the advice and assent of this Councell, is that great and common Council solemnly called. The forme of the writ of Summons to the Sheriffe, followeth in these words. *Rex viz. S. &c. Quia sic arisamento & assensu Concilii nostri, pro quibusdam arduis, & urgentibus negotiis, nos Statum, & defensionem Regni nostri Anglia, & Ecclesia Anglicana concernentibus, quoddam Parliamentum nostrum apud Civitatem nostram: W. &c. teneri ordinavimus, Et ibidem cum prelati, Magnatibus, et Proceribus dicti Regni nostri colloquium habere, et tractare. Tibi, &c.* wherein these things are worthy observation.

1 That this great Court is assembled by the power of the King, expressed in his writ under his great Seale, with *Teste meipso*.

2 This power is extended with the advice and assent of his Right Honourable privie councell.

His grace, favour, and providence by calling a parli.

Parliament to parlee and treat with his Lords spirituall and temporall, as also with his commons, who by their Knights, Citizens, and Burgeses, as their respective proxies, elected by, and with the popular suffrage of the Freemen of every Countie, Citie, Towne, or Borough, do make up the body of that great court, and doe there meet to yeeld, and consent unto such matters, as shall be there treated and established.

4 The subject of a treatie or parliament: That is, certaine difficult, and urgent occasions, concerning his Majestie, his royall state, and the defence of his kingdome and Church.

This high court consisteth of two houses, The higher or upper where the King and his Barony, or Nobilitie spirituall and temporal, do take their place: And the lower house, where the Knights, Citizens, and Burgeses, are assembled for the Commons, consisting, when *M. Crompton* wrote his jurisdiction of Courts, of 439. persons. The King had the only power to appoint it, his gracious favour is to give life, and beginning to it, by his owne personall accessse, in most Royall state, And as *finis coronat opus*, hee crowneth and perfecteth all the Acts of this great assembly with his Royall assent, without which no bill can passe, nor law be made.

Though there bee no written Acts of parliament extant before the raigne of *Henry* the third, yet some have sollicitously laboured to draw the Antiquitie of this thrice excellent court of Parliament from King *Arthurs* time to king *Ine*, *Offa*,

E c *Ethelred*,

An Explanation

Ethelred, *Alfred* and others, before the Conquerour, with a successorie continuance untill this Present age, and collected, and inferred, that the words used by *K. Inas* in the proem of his laws *exhortatione, &c. Omnium Aldermannorum meorum, & seniorum sapientum Regni mei*. And the like words of *Offa*, and other kings, in the time of the heptarchie, and that the words of *Conventus sapientum*, used by King *Edward* the sonne of *Alfred*; the words of *Conventus omnium Nobilium & sapientum*, used by King *Athelstane*; *cum consilio sapientum*, used by king *Edgar*, *Hac instituerunt Rex & sapientes*, mentioned of King *Ethelred*, and the like of other Kings, should include the Lords and Commons of the parliament; whether this most eminent Court were in those ancient dayes assembled and exercized in that manner, as now it is, *dubium est, dubitare liceat*, doubtfullnesse is a fluctuation of the minde, which in historicall matters of indifferencie, that concerne not our Christian faith and legeance to our Saviour, nor our naturall or civill Legeance to our Sovereign, cannot bee interdicted to the poorest thoughts; Sure I am this Court is so ancient, and of such transcendent honour and justice, as *Plow. com. fo. 399.* observeth, that none ought to imagine any dishonourable thought of it; and why? It must be so esteemed *ratione persone regis*, by reason of the kings sacred person, who is there present and president of that great Assembly, as also the laws there made, are established by the generall consent, and are obligatorie both to king and people.

The

of the ancient oath of Legeance. 201

The parliament being called, with the advice and consent of the privie Councell, what is the end of their meeting? Sir Thomas Smith in his Common wealth of England, l. 2. c. 2. shall speake for me.

The Parliament (the Kings Royall assent being had; abrogateth old lawes and maketh new, giveth order for things past, and things as yet to be followed, changeth the right and possessions of private men, legitimateth bastards, establisbeth formes of religion, groweth forme of succession to the Crowne, defineth of doubtfull rights, whereof no law is already made, appointeth subsidies, sayles, taxes, and impositions, giveth most free pardons and absolutions, restoreth in blood and name, with many such preheminences.

Power of a parliament.

In this great assembly, no reviling nor nipping words must be used: And if any speake unreverently or sediciously against the Prince or the privie Councell, they have not only beene interrupted, but justly sent unto the Tower, by the authority of the house: those that be members of that bodie, must come with a prepared heart to consult together, to give counsell and advertisement what is good and necessarie for the common weale; they must come with cheerefull resolutions to supply the prince his wants, they must cast off all rancor, spleene, and private malignancie, for *locus sacer est*.

I will second it with the words of a great Judge.

Co. Instit. fo. 110. a.

The jurisdiction of this Court, maketh, enlargeth, diminisheth, abrogateth, repealeth, and reviveth laws,

Statutes, Acts, and Ordinances, concerning matters Ecclesiasticall, Capitall, Criminall, Common, Civill, Martiall, Maritime, and the rest.

What cannot a parliament doe (as a great peere once told *Queene Elizabeth*) Royall assent being had? was it not then a hainous and inexcusable crime, for any man intrusted with the lawes, publicly to declare, that the late imposition of Ship-money was a prerogative so inherent in the Crowne, as that it could not be taken away by Act of parliament? It is most repugnant not only to the workes and writings of the ancient heroes of the law, *Bracton, Fritton, Fortescue*, and others, but also to the opinions of grave and learned moderne Writers, and dead and living Judges. But that opinion, and all the proceedings upon the Shipwrits are in this present parliament condemned and disanulled, and the petition of right in every particular confirmed.

17. Car. cap. 14.

To adde something more; *Bellarmino* (after many sharpe writings and vehement disceptations in defence of merits and workes of supererogation) his age hastening his end, now bethinks himselfe, falls wholly from disputes of merits, to pious meditations, and therein presents unto the world, *Tutissimum est iter ad calum per merita Christi*; The safest way to heaven, is by the merits of Christ. An honourable peere, as great in the policie of our English state, as ever the other was in the Romish Church, was formerly a great Zealote for the liberties and wellfare of the common people, and an earnest prosecutor of the petition of

of right. Afterwards in the highest of his eminent advancements, relapsing and disaffecting the course of parliaments, whose examination and tryall his actions could not well endure, *mole tandem ruit sua*, is at length hurried downe with the weight of his owne greatnesse. And not long before his death ingenuously confessed, *That the Parliaments of England were the happiest constitution that any kingdome did ever live under, and under God the best meanes to make King and people happye.* And sowith his dying words (omitting the numerous priviledges of that high Court) I conclude this part.

THE



THE
KINGS
Royall office
OF
PROTECTION.



Shall proceed to the last of my Generalls, that is, *The Royall office of the King for the protection of his people.* I have touched before his *personall* and *politike* capacity, and the naturall *Legeance* and *Subjection* of the people to him, and principally in the right of payment, their dues and duties, and the great question *de modo reddendi*.

As *Legeance* is due from the Subject to the King before the Oath be taken, and the Oath is
but

but a visible demonstration of it, So there is a Protection, due from the king to the people, before the oath administred to him at his Coronation, and that oath is but a politicall expression, of what by the law of God and nature, and the lawes of our nation, appertaines to his Kingly office. It is observed upon the fift Commandement, *Vbi sanciantur officia inferiorum erga superiores, ibidem etiam superiorum erga inferiores sanciri,* where *subjection* is enjoyned there *protection* is implied.

And. Rivet in
5. Præc. Decal.

What liberty is

As the Subjects must bee true and faithfull to the King of life, member and terrene honour: So the King must be as true to them in the protecting of all these: and their libertie and proprietic in all these, *viz.* the *libertie* of their lives, of their religion, of their persons, and the propertie and right of their livelyhood and estates in their lands and goods, all which may be comprehended under this one word *libertie*, *dulce nomen* and *res dulcis*. **B**ut what is *libertie*? It is a freedome, or free and quiet enjoying of a man his *spiritual* and *temporall* estate, his *bona animi* or *anima*, and his *bona fortuna* from rapine, expilation and all unjust incroachments, restraints, confinements, imprisonments and oppressions whatsoever, and that part of our Law which concernes the Subjects libertie is commonly called in the Law bookes, *Lex terra*.

Liberty is the only preserveresse of a Christian Common wealth in incolumitie and stabilitie, And as one saith, *Rebus omnibus humanis Anteposenda,*

nenda pro illiusq; incolumitate, & integritate totis viribus, & opibus dimicandum; It is to bee preferred before all humane affaires, and the safety and entirement of it to be propagned and defended with all manner of strength and power. But *liberty* must have its *modum, & mensuram*. It must be with an *Ita tamen cum justitia, dignitate, prasidio, & reliquis reipublice ornamentis sit conjuncta*, It is and must be joyned with Iustice, Honour, ayd, and the rest of the Ornaments of a Common-wealth; That is true *liberty* which is joyned or affianced with upright reason; And he is a true Free-man which hath such reason for his guide in all his actions.

Reason is *radius divini luminis*, the lustre of a divine illumination; It is the stampe of Gods Image in man, it renders man glorious in preheminance above, and in Dominion over all other Creatures; In the participation of its faculties, it makes one man more excellent, and eminent than another.

Liberty is a word of generality, extensive and appropriative to all Common-wealths, *Secundum modum*, and so to bee used and squared according to the generall law of Nations. And it is defined by *Bracton* thus, *Est autem libertas naturalis facultas ejus quod cuiq; facere libet, n si quod jure aut vi prohibetur*, It is a naturall facultie of every man to doe whatsoever hee pleaseth; but what he is prohibited by Law or Armes. *Frederic* saith *Fortescue* is grafted in mans Nature by God, whereof if a man be de-

Bract. l. i. c. 6.
Num. 2.

prived, he is ever desirous to recover the same againe, as all other things doe that are spoyled of their naturall *liberty*; But more particularly there is a Nationall *Liberty* which must be regulated by its owne peculiar and prescript Lawes; Let us instance our owne British or English Nation, wherein we enjoy a twofold *liberty*, the one Evangelicall, or Christian, which is our Religion; the other Civill, or Politicall, our estates and lively-hood: This *Liberty* is not so free of it selfe, nor so large in its extent, but that it must be confined under the wardship of the Law.

Law the Guardian of liberty.

Lex igitur sit custos Libertatis, quæ summis & infimis æqua reddat & præscribat jura. Nil contra leges committatur quod impune fiat, in alienam dignitatem, fortunas, vitam deniq; nemo temere invadat. Quod quis habet, illud se habere existimet, Let the Law be the Guardian of Liberty, which may render and administer equall right, both to high and low. Let no man transgresse the Law with impunity, nor rashly assaile another mans estimation, life nor lively-hood; And every man know himselfe to be owner of what he hath.

This last *species* is a most reall property of true *liberty*, and a great happinesse indeed both to KING and People, that the people may know what they have of their owne to render to the King for his timely supplies; And the King be assured of their ableness and readinesse with their uttermost meanes to support his great and weighty office of *Protection*.

A man may behold the *emblem* of true *Liberty* in *Jacobs Ladder*. *Angels ascending*, and *descending*, *Angels of Legeance and Obedience*, ascending to the Throne of Majesty: *Angels of Peace, Grace and Protection*, descending from the Sovereigne to the Subject. *O quam eximium & divinum libertas est bonum, quod omne vivens expetit, & sine quo nihil jucundum, nihil suave, nihil clarum cuiquam esse possit, Ac ne ipsa quidem vita vitalis esse videatur, pro qua nemo unquam bonus mori dubitavit*, Oh what most excellent and divine good is *Liberty*, which every living creature desires and affects, without which, nothing can bee pleasing, nothing comfortable, nothing can be deare to any man; Nay life it selfe will seeme to be no life.

And for support of this liberty, what good man would grudge to die. It is the Mother and Nurse of all resplendent vertues, the *Mistress* of all liberall Arts, and Sciences, the beauty of Peace, and the Theater of *Justice*, This makes the King splendidly radious at home, and formidable abroad.

He that will behold *liberty* in its true lustre, must cast his eye upon its opposite; A base, asininary *servitude* and servile subjection. But what sort of *servitude* I now mean, may be a question:

There are diverse severall sorts of *Servitude*, Three sorts of
Servitude.
There is,

1. *Servitus creata* constituted by the Law of Nations, whereby a man becomes subject to another mans power and dominion, contrary to na-

The Kings Royall Office

ture, and is called so a *servando*, non a *serviando*, from their safety, not from their service, For in ancient times *Princes* were wont to sell their *Captives* who were subdued by Warres, thereby to save and not slay them.

2. *Servitus Nata*, which was a bondage or service introduced in this kingdome in all probabilities from the Law of *Nations*, and so by Native propagation they were called *Nativi* and *Nativa*, and their service grew to bee a tenure in *Villanage* which was uncertaine and indeterminate, they were bound to do, whatsoever they were commanded, by their Lord, and did not know over night, what they should doe in the morning; yet this servitude was *legall*, because warranted by the Lawes of the Land. They were under the protection of the King, whosoever killed any such person was to undergoe the same judgement as if hee killed a Free-man. Neither of these are within the Scope of any of my intentions, but a far worse.

1. *Servitus liberis imposita*, or *libertas in servitutem redacta*, a bondage imposed upon Freemen, or *liberty* reduced to slavery, which whosoever shall attempt to effect, doe as much as in them lye compasse the subversion of the lawes of Nature, the Lawes of God, the fundamentall Lawes of the Land, the incomparable glory of the King, and the welfare of the people; *Liberty* saith *Bracton* is *evacuatio servitutis*, an empty.

emptying out or voyding of *servitude*, Et *contrario modo sese respiciunt, & ideo simul non morantur*; There is such an *antipathy* betweene them, that they never abide together.

Arbustum geminos non capit Erythacos.

Where such *servitude* hath its residence, in what Nation soever, there is no Iustice, no perfect vertue, no Valour, no Arts, no Sciences, no Doctrine, no Discipline, no Law, no property, *Ibi homines ipsi* (saith one) *dimidium animi perdunt*, their lives and Conditions are irksome to themselves, unusefull, and unprofitable for any service, and most inglorious to their Prince; of this more in another place. I proceed in the matter of *Protection*.

Master *Bracton* describes three things which the K I N G upon at his Oath his Coronation ought to promise to his people under his subjection.

1. *Imprimis, se esse praecepturum, & pro viribus opem impensurum ut Ecclesia Dei & omni populo Christiano vera pax omni suo tempore observetur*; Hee shall command, and to his uttermost indeavour, that true peace may bee at all times observed to the Church of God, and all Christian people.

Ff 3

2. *Secundo,*

The Kings Royall Office

2. *Secunda, ut rapacitates, & omnes iniquitates omnibus gradibus interdicit;* That he should by all meanes straitly prohibe, or reſtraine all extorſions, or oppreſſions, greevances, and all injuſtice whatſoever.

3. *Tertio, ut in omnibus judiciis aequitatem præcipiat & miſericordiam, ut indulgeat ei ſuam miſericordiam Deus, & ut per juſtitiam ſuam firma gaudeant pace univerſi;* That in all judgements He doe preſcribe and injoyne the execution of Juſtice (or right and reaſon) and of Mercy, That our mercifull and gracious God may have mercy on him; And that by his Juſtice, all men may enjoy a conſtant Peace.

Our late times (as by an old *Magna Charta* Printed, Anno 1558. appeares) have ſet forth the forme of the KING S Oath at His Coronation.

Out of which I have ſelected theſe branches, concerning the regall Office of *Protection*.

1. That hee ſhall keepe, and maintaine the right and the liberties of the holy Church, of old time granted by the righteous Chriſtian Kings of England.

2. That he ſhall keepe the peace of the holy Church and of the Clergie, and of the People with good accord.

3. That hee ſhall doe in all his judgements equity, and right Juſtice, with diſcretion, and mercy.

4. That

4. That he shall grant to hold the Lawes and Customes of the Realme, and to his power keep them, and affirme them, which the folke and people have made and chosen, and the evill Lawes, and Customes, wholly to put out.

5. And stedfast, and stable peace, to the people of this Realme, keepe and cause to bee kept to his power.

6. And that hee shall grant no Charter, but where hee may doe it with his Oath.

All these severall branches, are but the specifications of that one word *Protection*; But it will bee demanded (what is *protection*?) It is not onely a safe-gard and defence of *life* and *member*, liberty, lands, and estate of the Subject, but a conservation and maintenance as well of the Religion, as of the Lawes established within his Majesties Realmes.

What Protection is.

And that this blessing of *protection* may the better flourish over us; The incessant prayers of our *Church* do daily intercede for Our Gracious Sovereigne unto *Almighty God*, so to dispose and governe his heart, that in all his thoughts, words, and workes, he may ever seeketh the *honour* and *glory* of *God*, and study to preserve his people committed to his charge, in *wealth*, *peace* and *godlinesse*. This *protection* is generall, from the King to all, and over all his people, and sometimes more specially to some particular persons in some speciall cases of transmarine busineses, or other services by way of writ.

There are a twofold meanes by which this benefit

benefit of safety is diffused, and distributed from the Prince to the people.

1. By *Lawes*.

2. By *Armes*.

Whereupon learned *Glanvill* Chiefe Iustice in the dayes of *Henry 2.* in his prologue to his Treatise of the Common Lawes of *England*, thus begins: *Regiam potestatem non solum armis contra rebelles, & gentes sibi regnoq; insurgentes esse decoratam, sed & legibus ad subditos & populos pacifice regendos decet esse ornatam*, It doth well become Majesty not only to be well appointed with *Armes* against Rebels and Invaders of Him and his Kingdome, But to bee furnished with *Lawes*, peaceably to order his Subjects and people. And *Bracton* Chiefe Iustice in the time of *Henry* the third affirms thus, *In Rege qui recte regit, necessaria sunt duo hac, Arma viz. & Leges, quibus utrumq; tempus bellorum & pacis recte possit gubernari*: He addes further, *Si arma defecerint contra hostes, rebelles & indomitos, regnum erit indefensum: Si autem Leges, exterminabitur Iustitia, nec erit qui iustum faciat iudicium*, If *Armes* (or Military supply) against enemies be failed the kingdome will bee naked and indefensive, and if *Lawes* be wanting *Iustice* will bee exiled, and there will bee none to give just iudgment.

Lawes and *Armes* are the proppes, or pillers of *Protection*, *Lawes* are of a most excellent preeminence above *Armes*, If the Law had not bin broken there had bin no use of *Armes*. I will ther-

therefore first begin with *Lawes*.

There was a Law *instita natura*, written in the heart of man in and with mans Creation after Gods owne Image. By some it is called the *Law of Nations* and ought to be observed as well amongst *Iewes* and *Gentiles*, as amongst *Christians*.

Lawes

And in our Common Law it is called *Lex rationis*, which by a naturall prompting doth informe us, that all good things are to be pursued and all evill to be eschewed; This Law of Nature through tract of time, and Customes in sin was flurred, defaced, and in a great part worne out, *Necessarium igitur fuit quod daretur Liber extrinsecus, continens leges & praecepta per traditionem Dei, &c.* And thereupon the Law was given by God upon Mount *Sinay* to *Moses* (as is herein formerly handled) which is the *positive Law* in the Scriptures. The *Prophets* afterwards by often denouncing of woes, and judgements against the breakers of the Law, did quicken and give life unto it in the people. The summe of all this Law and the duty of it, our blessed *Saviour* did in one Evangelicall precept render unto all posterity, *In all things whatsoever yee would that men should doe to you, doe yee even so to them, for this is the Law and the Prophets.* From the Law of Nature or Reason, and from the divine Law imposed in the Scriptures, all the principall and fundamentall Lawes of our Kingdome are subderived, and thence by secundary and mediate grounds have their essence and consistence.

*Dr. & stud. li.
1. cap. 2.*

Match. 7. v. 12.

Gg

As

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As the Law of *Nature* was at first not written in any *judiciall* book; So (you have heard before) that the *Lawes* of *England* were at first *leges non scriptæ*, and the Subjects *liberties* only known and distinguished by *Custom* and *usage*. These not written *Lawes* for the most part of the first two *centuries* after the *Conquest*, were much obscured and even subverted, partly by the then over-ruling arbitrary sway of *Sovereignty*, sometimes by *Papall* usurpations, oftentimes by the over-weening power and tyrannicall pressures of the *Peeres* and *Great Counsellors* of state over the poore disheartned *Commons*, who for recovery of their wounded, and defaced *Lawes* and *liberties*, were oft enforced into many outrageous rebellions, and bloudy insurrections, in so much as the Government of the *Kingdome* for a long time, grievously languished of an *Antonomical* fever. Begin we with the beginning of the Subjects seeming recovery of their old *Lawes* and *liberties*.

King *John*.

King John before mentioned having bin long imbroyled by the *Civill Warres* of the *Barons* inflamed by the *Pope* (who to advance his supremacy here soothed up the King with thundring out excommunications against the *Barons*) about the seventeenth yeare of his *Raigne* being affrighted with the noysed strength of his *Nobles Army*, descended to a meeting and parlee with them at a place called *Roundesmead* betwene *Stanes* and *Windsor*. And upon a pacification of his

his Nobles and for quieting of his kingdome, He there by his Charter 16. *Annij Anno regni 17.* called *Magna Charta*, did grant unto his *Peeres* and *Commons* their long claymed liberties, and not many moneths after dyed.

Henry third a Child of nine yeares age *Anno 1216.* ascendeth the Throne as heire to the incumbrances of the kingdome as well as to the *Crowne*; The *Commons* greedy of liberty, and the Nobility of rule, and the humorous spirits of young insinuating favourites opposing and discountenancing the wisdom of the gravest Counsellors, kept the King in an unsteady and unsettled course of Government.

In the ninth yeare of his Raigne, *Anno 1224.* He granted to the Nobility and Commons such *Laws* and *liberties* as had bin used long time before; And caused Charters to be made, one called *Magna Charta*, the other *Charta forestæ*, which he sent into every County. The præamble of *Magna Charta* doth set forth; That to the honour of *Almighty God*, the advancement of holy Church, and the amendment of the Realme, The King of his meere and free-will, did give and grant to all Arch-Bishops, Bishops, &c. Earles, Barons, and to all of his Realme the *liberties* following to bee kept within his Kingdome of *England* for ever, which grant containeth in all 37. Chapters.

The two Charters granted by *Henry 3.*

In the twenty ninth the greatest liberty of the Subject was granted, viz. *No Free-man shall be taken or imprisoned, or be disseised of his free-* *Nullus liber homo, &c.*

Grant of a
Fifteenth.

hold or liberties, or free customes, or be out-lawed^r or exiled, or any otherwise destroyed. Nor wee will not passe upon him nor condemne him, but by the Law of the Land; wee will sell to no man, we will not deny nor deferre iustice, or right: Here every word is a sentence grande, in grando a weighty matter (as I may terme it) in the continent of a graine; Herein is contained that *eximium quoddam*, our Nationall liberty before cited: And an epitome of so much of *lex terra* in the generality as concernes the Kingly office of *Protection*. In the 37. and last ch. The Clergie, Earles, Barons, Knights Free-holders, and others his Subjects, did give unto the King in respect of both those Charters the *fifteenth* of all their moveables. And the King did grant unto them on the other part, that neither he nor his heires should procure or do any thing whereby the liberties of that Charter should be infringed or broken.

This grant of *Magna Charta*, though it carries the forme of a meere Charter, *ex mero motu & spontanea voluntate* (as it was the use at that time and long time after,) yet is it a *Parliamentary* grant and Statute, and is called the *great Charter* (though little in it selfe) in respect of the weighty matter comprised in it in few words. It is the *fountaine* of all the *fundamentall* lawes of the *Realme*, and the only *basis* and *groundcell* which supports the superstructure of all the *Lawes* and *liberties* of the Subjects; And it is but a confirmation or restitution of those not written Lawes before mentioned.

Would

Would any man thinke it possible that this *Magna Charta* could ever bee violated by the same hand that made it? The King was young, milde and gracious, but easie of Nature, (a sin not in it selfe, but by accident,) He was happy in his Vnkle the Earle of Pembroke, the guide of his infancy, but unhappy in *Hubert de Burgo* his Iusticiary and others. Those *Liberties* redeemed with the price of a fifteenth, the Subjects had not long injoyed, and little fruit of *future* freedom more than for the present, like a glimmering sunne-shine in an unconstant calme, had this common people by this grant; Eft-soones the *Clouds* returne, *malum in malum ingruit*; The young King having newly attained the Age of twentie one yeares, by the evill Counsell of his Chiefe Iustice *Hubert*, at a meeting at OXFORD in the twelfth yeare of his Raigne, did by open Proclamation, frustrate and cancell his former *Charters* made in the ninth yeare of His Raigne, under pretence, that hee was under the power or ward of others; So it followed that whosoever would injoy the *liberties* before granted, must purchase their *Charters* under the Kings new Seale, at such a price as the Iusticiar should award.

This was greivously taken by the Lords and COMMONS, in so much as the same yeare the BARONS supplicated the King to restore the *Charters* which hee cancelled at Oxford, or else they would recover them by the sword.

It was most disloyall in them to be *assertores libertatum* and to enter into competition with the King with Comminations of the sword. *Bracton* who wrote long before, left better Counsell behind him in such things as concerne the *Act* of the King, *Si ab eo petatur (cum breve non currat contra ipsum)* if any thing be requirable from him (sithence he is lyable to no action) *Locus erit supplicationi, quod factum suum corrigat & emendes*, He is to be supplicated that he would reforme and amend his doing, which if hee doe not, *Satis ei sufficit ad penam quod Deum expectet ultorem*; It is punishment enough to him to expect the Lords revenge. Observe what followed in this Kings time, whilst he gave over the raines of his rule to young unseasoned giddy braines, some of them alyens, and strangers; the gravest Counsellors being discountenanced, the Barons falling into factious ruptures, and the repining Commons into discontented rebellions; The whole Monarchy languished, all things were disordered, and out of frame.

Claus. An. 42.
Henry 3.

Almighty God looking downe from Heaven upon the vacillation, and incertitude of this Vicegerencie under him upon earth, exerciseth his owne *supremacy*, addresseth one of his greatest Messengers of indignation, *famine*, which raged with that violence, That the King was enforced to direct writs to all the Sheriffes of Shires, *ad pauperes mortuos sepeliendos famia inedia deficientes*. And it is observed, *fames processit & sequutus est gladius tam terribilis, ut nemo in-*

inermis securè possit provincias pervagare; The Civill brandishments of the sword followed every where the fury of the *Famine*. In this Nationall distresse *silent leges*; Nay, *vix legibus tempus aut locus*; Scarce was there time or place left for clayme of liberties or execution of laws. Sure it is the King and Commons had but little ease, whilst his absolute power was *participated* (not *delegated*) to his great ones. To recount the various troubles and turmoyles of his long and unsetled raigne were the work of a sad and sorry Hystory. Afterwards it pleased God (who hath ever a particular and tender care of *Princes*, *per quem reges regnant & Principes dominantur*) towards the latter end of his Raigne, to restore the *King* to his *right* and his tyred Subjects to their naturall obedience; Hee had the happinesse to call a successfull *Parliament* at *Marleborough* 18. of *Novem.* 52. of his Raigne, 1267. and therein amongst many notable Lawes enacted; He solemnly confirmed the former *Charters* in all their Articles, and strictly injoynd the observation of them to be inquired before the Iustices of Eire in their Circuits, and before the Sheriffes in their Counties when need should be; The *King* seeing his former errors, now began to balance his Government with *præmio & pœna* reward and reprehension, and himselfe with an equall hand to hold the scale, He laboureth to reforme all that was amisse; The seats of judgment and *Counsell* he supplied with men learned, and Nobly borne, He sate himselfe daily in Councell.

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Councell and disposed his affaires of most consequence in his owne *Person*, His Countsellors (as one saith) were avessaries not principalls; He permitted them ability to advise, not authority to resolve. By this meanes keeping the lore in his owne power (as fittest for Princes to doe.) Hee had a gracious issue of peace, ever after attending the remainder of his Raigne, and happily lived to traine and adaptate his son and Successor, *Edward* the first *Englands Iustitian* for the future swaying of his Royall Scepter, and afterwards 16. *Novem.* 1272. dyed, his sonne and Successor being then in the holy Land and thirtie yeares of age, who being partner of his Fathers experience, shewed himselfe in all his actions after capable to command not the *REALME* onely, but also the whole world.

This renowned King returning from the holy Warres, was with *Eleanor* his Wife crowned at *Westminster*, 15. *Aug.* 1272. And afterwards, 15. *Aprilis* 3. *Regni*, began his first Parliament at *Westminster* called *West.* 1.

And therein the King did will and command that the peace of holy Church and of the Land bee well kept and maintained in all points, and that common right be done to all as well poore as rich. And *cap.* 6. doth provide that no Cirie, Burrough or Towne, nor any man be amerced without reasonable cause, and according to the quantity of his trespasse (that is to say) Every Free-man, saving his Free-hold, a Merchant sa-
ving

ving his Merchandize, a Villaine saving his gaignure, and that by their Peeres, and this is but a reflexe upon the 29. Article of the *Great Charter*, No Free-man shall be taken, &c. In *October 25. Regni*, after many other Parliaments; The King held a Parliament at *London*, and did then fully grant and renew the *great Charter* made by his Father in the ninth yeare of his Raigne, and the 37. Chapters therein contained unto the *Peeres* and Commons in *hoc verba*, and likewise the *Charter* of the Forest under his great Seale.

In this Parliament *cap. 1.* those Charters were confirmed. And the King did well that the same should be sent under his Seale, as well to his Iustices of the Forest as to others, and to all Sheriffes of Shires, and to all his other Officers, and to all his Cities throughout the *Realme*, together with his writs, commanding that they cause the foresaid *Charters* to be published and to declare to his people, that his Highnesse had confirmed them in all points; And that his Iustices, Sheriffes, Majors and other Ministers (which under him had the Lawes of the Land to guide) should allow the same Charters pleaded before them in judgement in all their points, *s.* the great Charter (as the Common Law) and the Charter of the Forest for the wealth of the *Realme*.

Cap. 2. All judgments given against the points of the Charters should be undon and holden for nought.

H h

Cap.

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Cap. 3. It was enacted, that the same Charters should bee sent into every County under the Kings Seale there to remaine, and should be read before the people two times by the yeare.

Ca. 4. The sentence of examination was to be denounced twice a yeare against the breakers of those Charters.

Cap. 5. It was enacted, That whereas the aydes and taskes given to the King before time towards his Warres and other businesse of the Subjects owne grant and good will (howsoever they were made) might turne to a bondage to them and their heires; because they might bee another time found in the *Rolles*, and likewise for the prices taken throughout the *Realme*, by his Ministers; That such ayde, taskes, or prices, should not bee drawne into a Custome for any thing, that had beene done before, be it by *Roll* or any other president whatsoever that might be found.

Cap. 6. That from thence forth no such manner of aydes, taskes nor prices should be taken by the King, but by the common assent of the *Realme* and for the common profit thereof.

Ca. 7. The Commons being grieved with the Maletent of woolls, & a toll of 40. s. for every sack of Wooll, upon their petition, the King released it. And did grant for him and his heires, that no such things should bee taken without their common assent and good will.

Mag. Char.

Printed 1540.

The whole Subject of this *Parliament* is still, *Confirmatio chartarum de libertatibus Angliæ*



& *forreſta*. And followes the great ſentence of excommunication called *ſententia lata ſuper Chartas*, denounced by Robert Kilwarby Arch-Biſhop of Canterbury and the Clergy againſt the violators of thoſe Charters.

I find next inſuing this ſentence in that booke of 1540. the Statute, *de tallagio non concedendo*, that no tallage or ayde ſhould be laid or levied by the King or his Heires without the good will and aſſent of the Arch-Biſhops, Biſhops, Earles, Barons, Knights, Burgeſſes, and other Free-men of the Communalty of the Realme.

Cap. 2. Nothing ſhould be purveyed to the Kings uſe without the owners conſent.

Cap. 3. Nothing from thence forth ſhould be taken of ſacks of Wooll by colour or occaſion of Maleſent.

Cap. 4. All Lawes, liberties and Cuſtomes were againe confirmed; and the curſe of the Church to be pronounced againſt the breakers of this Charter.

This Statute hath no certaine time prefixed of its making; But afterwards at a Parliament held at *Weſtmiſter*, in Lent, 28. *Edw. 1.* certaine Statutes were made called *Articuli ſuper Chartas*, whereby the two Charters were more ſtrictly confirmed and injoynd to be read foure times in the yeare, by the Sheriffe before the people in full County, and thoſe are but explanations upon *Mag. Charta*.

The ſecond Chapter being large and wholly made for the reliefe of the Subjects againſt the

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Kings *Purveyors* and *Ministers* fortaking their goods and victualls against their wills at what price they pleased, and sometimes without any price.

The third concerning the *Marshals* jurisdiction of the Kings House, and other good in King Lawes, and Statutes, which are but *Comments* or *Paraphrases* upon that Article of *Nullus liber homo, &c.* and doe provide penalties in certaine where none were before.

I will wade no further into the numerous confirmations of *Magna Charta*. It hath bin ratified since 9. of *Henry* third, above thirtie times, I may be bold to say it is the *Grammar of the fundamentall Lawes of the Land*; By which all other Lawes are to be construed.

It is the *lydius lapis* of the Law, It is the *syse and Standard by which all our Nationall Lawes must be assayed and tryed*. Those are the Lawes which the Kings of *England* at their *Coronations* have sworne to maintaine, and to execute Iustice to the people according to the Lawes, and thereby to protect their subjects.

No *Acts of Parliament* are so wisely contrived and interwoven with reason, and judgment, but some sonnes of *Beliall* will *arte vel ingenio* strive and compasse to elude and subvert them. At the *Parliament* in the third yeare of his now blessed Majesties Raigne an *humble remonstrance* was presented by the *Peeres* and *Commons* unto his Majestie in their petition of right, concerning diverse rights and liberties of the Subjects
before

before mentioned, which had bin intrenched upon touching their lives, persons and estates. Whereupon his Majesty did fully, freely, and graciously confirme in all points their said petition of right with *Soit Droit fait, come est desire.* And I dare boldly say, His Royall goodnesse hath beene of himselfe most vigilantly carefull and tender to observe it.

It is said before that the *Law* is the *Guardian* of liberty.

The Law must bee under wardship too; who then be the Law-Wardens? The King originally is intrusted under God with the custody of the Lawes, under him the learned and Reverend Judges are interessed in the Curator-ship of the Lawes, and in them of the lives, liberties, and estates, of the whole kingdome. And at their first investiture into their places they take a solemne oath incident to their great offices; By that oath they ingage themselves as fe-offees in trust to Minister true right, betweene King and people, and to execute Iustice to the people according to the Lawes of the Land, and thereby, and by receiving the weighty trust from and under him, for the custody of that inestimable Jewell the Lawes, they are to acquit the King of so much of his oath. I cannot here forget some old verses.

*--- Realmes have rules, and Rulers have a syse,
Which if they keep not, doublesse say I dare
That eithers greefes, the other shall agrise,
Till the one be lost, the other brought to care.*

I will not Comment upon them, they were written upon a Subject of 240. yeares agoe, and a bad sample thereof hath hapned in our times. *Lawes* are the *sysse of rule and government*. By which the opinions and judgements of our twelve *Iustitiars* must bee weighed and guided, they are the Subjects birth-right and inheritance; They are the *golden* ring by which the King at his Coronation is politically espoused to the Common-Weale, and have bin enameld with the bloud of many Millions, and Myriads of soules. Woe be therefore unto them, that have been, are, or shall be the violaters and betrayes of that sacred trust. What must they be that will render themselves guilty of so heinous a crime? Surely none of *Iethro* his Counsellors, Not men of courage, nor fearing God, nor loving Truth, nor hating Covetousnesse; They must be in their conditions *Tyrants*, haters of Law, for having once broken the lore of Law they feare to be tryed by the plumb-line of the Law: And then followes, *Quod timent, oderunt, quod oderunt destrui & irritum omnino esse volunt*, what they feare, they hate, and what they hate, they would utterly destroy. *Oderunt impij omnia Disciplina vincula & legem tyrannum esse judicant*, The wicked hate all bonds of Discipline, and condemne the Law to be a Tyrant; But their guerdon is, *Qui peccant contra legem, lege plectentur*; Offenders or Subverters of the Law shall have their demerited punishment by the Law. It is said of sacrilegious Church-robbers,

Moller in Pla.

139.

bers, *Frustra petunt auxilium Ecclesie*, &c. They are excluded all benefit of Clergie that sinne against the Church.

The Law is the Temple or Sanctuary where the Subject is to runne for shelter and refuge. *M. Saint Iohns speech fol. 42.*

If the Wardens of this Temple desert their Office, and abjurre the Sanctuary, Let them expect nor together, nor, other but the Law to bee *testem, iudicem, & Satellitem*, their witness, their Iudge, their executioner. And their I leave them.

So much for Law.

THe other prop or Pillar of *Protection* is *Armes*, whereof I have sufficiently spoken before, for so much as concerne the Subjects duty and leageance. *Armes.*

And for that which concernes his Majesty; It is so generally knowne, That I shall need to give but a touch. By the Common-Law of the Kingdome, No man was chargeable to arme himselfe, otherwise than hee was wont in the time of the Kings progenitors (*S. Edw. 1.*) And no man was compellable to go out of the Shire, but where necessity required, and sudden coming of strange enemies into the Realme; And then it should be done as had been used in times past for defence of the Realme.

Likewise the preparing men of *Armes*, and conveying them unto the King into forreigne parts,

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parts, was meere to bee at the Kings charge. And howsoever in the time of *Edw. 1.* certaine Commissioners did inroach upon the Commons, and compelled the shires to pay wages to the Preparers, Conveyers, and Souldiers, whereby the Commons had bin at great charge and much impoverishd. The King did will, that it should be so done no more. *Stat. 1. Edw. 3. cap. 5. 7. 1327.* And *18. Edw. 3. Cap. 7.* It is provided, That men of Armes, Halberts, and Archers, chosen to goe in the Kings Service out of *England*, shall be at the Kings wages, from the day that they depart out of the Countrey where they were chosen, till they returne. Those Statutes are but affirmations of the Common Law and are utterly destructive to the late impositions of *Coate and Conduet money*, and such like levies in that kinde, as are not warranted by common assent in *Parliament*.

By both these (*S.*) *Lawes* and *Armes* the peace and unitie of those two deare sisters, the *Church* and *Common weale*, are strengthened and upheld; And in both these the *Prince* hath power of direction to make and establish lawes, to raise and levie Wars, and power to command the execution and expedition of them; Neither of these are acted without Counsell, *frustra leges, frustra sunt arma nisi sit consilium*; And it is a true rule, *Sanctissimum consilium non sine concilio*, the best Counsell is from a Councel or Assembly of Counsellors. And therefore the King as you heard before is
attended

attended with his Privie Councell, which is a body politike, *unum è pluribus constitutum*, and no body without a head, for as *Forrescue*, fol. 30. saith, *Quandocunque ex pluribus constituitur unum, inter illa unum erit regens, & alia erunt recta.*

This body politike whereof the King is head (the antiquity and use wherof I have sufficiently before remonstrated) is attended with two great *Nuncios*, *Angelis è Cælo*, Justice and Mercy. They are *ornamenta corona*, The pretious Diadems of the Kings Crowne, they are *columnæ Majestatis*, the two maine supporters of regal dignity; By the one, *S. His Justice*, he hath *pote-statem præveniendi*, and *subveniendi*, a power, by making of Lawes sending forth his Edicts, and Proclamations of preventing all capitall and criminall offences, all homicides, rapines, oppressions, injuries, rebellions, mutinies, and all greivances whatsoever, either of force, or fraud, and either against the person or estate of His Majesties Subjects; And if prevention be not available (as in naturall, so in Civill diseases it sometimes failes) Then must his power of *subveniendi* be administred, and that by the due execution of his Lawes, which is twofold.

I. By *Castigation*, *correction*, or *corruption* of the Malefactor, either by privation of life, confiscation of goods, mulcts, and penalties, and by loss of libertie and other corporall infliction.

I i Secondly,

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Secondly, by relieving and comforting the offended and grieved Subject, with restitution, or retaliation according to the nature, and quality of the respective causes. And this cannot bee performed wholly by himselfe in his owne person, but by a subdelegation of *Iudges, Magistrates, and Ministers*; And them also (if he find in any of them any perverse, or corrupt aberration from the rules of *Iustice*.) He hath power and will to reprehend, and chastise, or else, who could challenge any freedome of *Protection*; For if the King and His Councell should (as some conceive) by that forecited clause of *Nullus liber homo, &c.* bee abridged from hearing and examining complaints, either in causes of extraordinary consequence, or against persons of greatest eminence (I meane not every cause that may be regulated by ordinary Iurisdiction.) Then bootlesse is that royall promise in the great Charter, *Nulli negabimus aut differemus Iustitiam, &c.*

Then must hee needs violate his solemne oath and vow at his *Coronation, faciam fieri Iustitiam, &c.* His eares must be therefore open to the crie of the poore, the fatherlesse and oppressed, or else he declineth the true properties of his *Viceregency* under God, who is *refugium pauperi*, Psalm. 99. *The LORD will bee a defence for the oppressed, even a refuge in the due time of trouble.*

This Princely office of *Protection* is lively descri-

described in the 72. *Psalme* made upon *Salomon*,
Give thy *Iudgement* O *God* unto the *King*, and thy
righteousnesse unto the *Kings* *sonne*, verse 2. Then
shall hee judge the people according to right, and de-
fend the poore, verse 4. Hee shall keepe the sim-
ple folke by their right, defend the Children of the
poore, and punish the wrong doer. Here is his *Iustice*
of *Consolation* to the oppressed, His *Iustice* of
Castigation to the oppressor. To that heavenly
Poem of the *Psalmist* some allusion hath bin by
an earthly *Poet*,

Protegit infantes, castigat iure nocentes,
Defendit totum sub ditione gregem.

So much of his *Iustice*.

BY the other prop or pillar of his *Imperiall*
Crowne (S. his *mercy*) the *King* hath,

1. *Potestatem remittendi.*

2. *Potestatem dispensandi.*

1. A power of remission, or pardon.

2. A power of dispensation: and both in
imitation of the sacred deity of *Heaven*, whose
immediate *Minister* and *Lieutenant* the *King* is
upon earth within his owne dominions.

In the old Law *Moses* by *Gods* direction did
appoint unto the Children of *Israel* Cities of
I i 2 refuge,

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refuge, as so many *Sanctuaries* of *Mercy*, whether the ignorant *man slayer who hated not his neighbour in times past*, as also the *casuall homicide might flee and live*: But if a man hated his neighbour, laid waite for him, rose up against him, and smote him that hee dyed and fled unto any of those Cities, *Then the Elders (or Magistrates) of the Citie should send and fetch him thence, that he might dye by the hand of the avenger, Dent.ca. 19. ver. 3, 4, 5, 11, 12.*

In this *Island* were heretofore *Sanctuaries*, places of refuge for such offenders to whom the Law intended *Mercy*, and these were in use many hundred yeares, but in this last Century they were abridged by the Statute of 1. *Iacobi* 25. So much of all Statutes, as concerne *Sanctuaries*, or ordering or governing of Persons in Sanctuary, were repealed, and made utterly voyd.

Besides the refuge of *Sanctuaries*, The *mercie* of the Law in many cases, as *homicide* in heat of bloud without prepenſed malice, theft, and such like, did afford the benefit of *Clergie*; And it doth at this time in a forme different from former times; For now, in stead of delivering the Malefactor over to the Ordinary to purge him selfe, hee is admitted to read before the secular Iudge. And if the Ordinary, or his Deputie pronounce *legit ut Clericus*; Then is hee to be discharged with a stigmaticall brand in his hand,

hand, as a warning to come there no more, and he forfeiteth his goods only. If *non legit* were pronounced; Then is the offender to suffer death for his transgression. But this kinde of *Mercy* is not absolute but conditionall. The most perfect *mercy*, as from *God*, so next under him from the King is *Pardon*, which is a French word signifying as much as *pax*, *venia*, or *gratia*, and is used in the Common-Law for the remitting or forgiving, of a felonious crime or other offence.

And it is twofold.

1. *Ex gratia Regis*, of the Kings meere *grace* and *Clemency*.

2. *Per cursum Legis*, by the course of Lawes, that is, according to the ancient Lawes and Customes of the kingdome.

Pardon of grace, is againe threefold.

1. *Parliamentary*, which is called free, and generall, granted upon the happy close and solution of a successfull meeting of the three States; The common good and benefit whereof is well and sensibly knowne to all His Majesties loving, and obedient Subjects: and this kinde of *pardon* is pleadable at all times.

2. Vpon the KING S Coronation, or other grand and extraordinary solemnity. But whosoever will reape the fruit hereof, must at some charge, within one yeare and a day, sue it forth under the Kings great Seale; Or else he is utterly debarred of it.

These two sorts of *pardons* are *ex generali gratia*, to all that are not excepted therein, and will take hold of the benefit thereof.

3. A *pardon ex speciali gratia* is that which the King in some speciall regard of the person, his merits and future hopes of good service, or other Circumstances, or in consideration upon some intelligence of the fact, or manner of the conviction, by any corrupt, malicious, or illegall proceedings, doth extend and afford upon his absolute Prerogative and power; And it is so far from violation that it well stands, with the observation of his oath.

2. *Pardon* by course of Law, is that which the Law in equity vouchsafeth for a light offence, as homicide casuall.

His power of dispensation, is a temporary qualification of the rigor of particular lawes, *emollit, non tollit legem*, as one saith, It doth mollifie, not nullifie a Law; And as the Civill Law hath it, *Ille qui dispensat, non tollit legem, sed ex causa, in certa persona, vel ad tempus remittit; Et dispensatio quandoq; est necessaria, Panorunt. super decret, capit, proposuit*, Hee that doth dispence with a Law, doth not abrogate the Law, but for some certaine cause, in respect of persons, or times doth remit the rigor; And dispensation sometimes is very necessary. *Positive Lawes* are but *leges temporis*, if so; Then are they dispensable, according to the necessity of times, or occasions.

cations. The rigid Pharisees taxing the Disciples of Christ, for that being an hungred, they did upon the Sabbath Day begin to plucke the eares of Corne and to eate, Our Saviour puts them two cases by way of question, Have you not read that David being hungry, entred into the House of God and did eate the shew-bread, which was not lawfull for him, nor any with him, but only the Priests? Or have you not read in the Law, how on the Sabbath day the Priests in the Temple breake the Sabbath (*Sabbatum violant & sine crimine sunt*) and are blamelesse? And then he doth absolutely convict them of ignorance, *If yee knew what this is, I will have mercy and not sacrifice, yee would not have condemned the innocents, Matth. 12. ver. 1. vsq; 8.*

If the Law of God by the mouth and judgment of his blessed Sonne was dispensable; No man can deny, but humane lawes which are transitory may admit a qualification; Or else our Gracious Salomon cannot according to the third branch of his oath, *doe equity and right Iustice, with discretion and mercy*; Observe the rule of the Common Law in this point, *Dispensatio mali prohibiti est de jure Domino Regi concessa, propter impossibilitatem praevidendi de omnibus particularibus. Et dispensatio est mali prohibiti provida relaxatio, utilitate, seu necessitate pensata, Co. 11. 88.*

No greater argument of supreme, and uncontrollable Majesty than a dispensatory power,
for

The Kings Royall Office.

for when the *Common Councell* of the Kingdome, have enacted penall Lawes, for prohibiting somethings to bee done, which are *evill, per accidens*; The *KING* by his owne Princely power alone, may either in regard of *persons* or *times*, or other necessarie contingencies dispence therewith.

PROTECTION, as it is *grande opus*, so it hath *grave onus*, a great Bulke, a large burthen.

The out-stretched and puissant Armes of this *Protection*.

1. By *Lawes*.

2. By *Armes*,

Are not supported and maintained without inexpressible charge.

In the first (*S.*) *Lawes*, observe in the maintenance and execution thereof; the Salaries, and wages of the great and reverend *Judges*, the fees, stipends, and allowances, of other Ministers, and Officers of *Iustice*, his Majesties extraordinary great expence in sending abroad and dispersing his *Edicts* and *Proclamations*, in all the quarters and corners of the kingdome.

In the second (*S.*) *Armes*, observe no lesse, if not farre more, in the reparations, and constant maintenance, and supply of His Royall *Navy*, of His Ordinance, *Artillerie*, and all other munition, And his assiduous preparation in the time of Peace, against the occasion or expectation of Warres; And all must be (according to
the

the Prayers of our own Church) to maintaine the People in *wealth, peace and godlinesse*.

But that wee may returne with the greater thankfulnesse to GOD, Let us look back, and there are not many quarters of yeares since this great worke of *Protection* was invaded, the union of two Ancient Kingdomes disturbed, The Subjects with jealousies distracted, the former Valour of our English hearts blunted and amated, our Liberties in a desperate jeopardy of bondage; And which is worst,

----- *Quis talia fando,*

Myrmidonum, Dolopumve, aut duri miles Ulyssis, Virg. Aen. l. 3.

Temperet a lachrimis?----

What flinty heart can forbear from teares? A sweet, mild, mercifull, KING in his studious vigilancy for quenching of these flames, most sensibly perplexed; and indeed brought into a great strait, that hee had just cause to invoke the Mercy Seate of Heaven in the language of the Kingly Prophet *Angustia est mihi valde*, I am in a great strait, 2 Sam. 24. v. 14. He was so indeed, and like *Jonathan* and his *Armour-bearer* between two sharp rocks, *Boxer* and *Seneb*, the fore-front of the one was situate North-ward, the other South-ward, 1 Sam. 14. v. 45.

What was the cause of all these miserable tumults, and turmoyles? Truly our blessed Sovereigne unhappily fell upon those times, wherein *David* complains of the Iudges, Magistrates and Ministers under his subjection, *Psal. 82. v. 1. &c.*

God standeth in the congregation of Princes:

K k

He

He is a Iudge amongst Gods, ver. 2. How long will ye: give wrong judgment: and accept the persons of the ungodly? David by mentioning Gods presence in the administration of judgments, endeavouring to strike a terror in their hearts adds that sharp increpation, v. 2. *Vsq; quo iudicatis iniquitatem, &c.* To give wrong judgment is in pronouncing of Law, not to observe an equality or rule prescribed by the lawes, but to give sentence *pro arbitrio suo*; after their own will, fancy, and passion, for no other cause but so they would have it, whence that *vox tyrannica* that proverb sprung up

Sic volo sic iubeo, stat pro ratione voluntas,

Our will is our reason, and our will shall command. After this severe obijuration the Prophet declareth the true use and end of upright judgment; *Defend the poore and fatherlesse: Seethat such as be in need and necessity have right*, v. 3. *Deliver the outcast and poore: save them from the hand of the ungodly*, v. 4. And then despairing of their reformation, he doth amplifie his reprehensions against them, *They will not bee learned, nor understand, but walk on still in darknesse. All the foundations of the earth are out of course*, ver. 5. It was so in Davids kingdome, and no lesse in King Charles His Great Britaine, David invocated God for redresse, *Exurge Deus & iudica terram, Arise O Lord and judge thou the earth*, v. 8. And so did King Charles, God heard the prayers, and humble supplications both of King and People. For in *istis oculis*, when all conditions of this State in the outward survey of humane judgment were most def-

desperate and deplorable, *Moventur omnia fundamenta terræ*, God did arise and (plead or) maintaine his owne cause, Our gracious Iosuah by the dictates of the holy Spirit did summon his Elders, called his Common-Councell or Great Congregation together, to treat of the difficult and urgent affaires concerning his Majesty, the State and defence of his Kingdome and the Church of England. The like in his Realmes of Scotland, and Ireland. They have all happily and religiously met in their severall orbes, the Civill and unnaturall breaches of the two disjoynted kingdomes are unanimously pacified, and both more firmly reunited than ever before. The issues and fruits of the Counsels and consultations of our Parliament have far surpassed the presidents of all former ages. Let the Acts, Ordinances and proceedings themselves be Judges. And pray we incessantly to the throne of Heaven, that God will be still present and president in the manuring of all their debates and deliberations concerning Church and State. And in al such times when King, Church and people are in a strait, *That God would arise, exurgat Deus & dissipentur inimici.*

Amen, Amen, Amen.

FINIS.

PROTECTION

of the rights of the people of the United States
to the free use of the public lands and waters

and to the free use of the public lands and waters

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